

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 08-36705-bjh-11**
) Chapter 11
SUPERIOR AIR PARTS, INC.,)
) Dallas, Texas
Debtor.) Wednesday, August 26, 2009
) 1:15 p.m. Docket
)
) - CONFIRMATION HEARING [280]
) - AMENDED MOTION TO APPROVE
) BID PROCEDURES [284]
) - EXPEDITED MOTION TO ALLOW
) CLAIMS ON PROVISIONAL BASIS
) FOR VOTING PURPOSES [387]
) - EMERGENCY MOTION TO ENFORCE
) BID PROCEDURES ORDER [360]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BARBARA HOUSER,
UNITED STATES CHIEF BANKRUPTCY JUDGE.

APPEARANCES:

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1 APPEARANCES, cont'd.:

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24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 DALLAS, TEXAS - AUGUST 26, 2009 - 1:28 P.M.

2 THE COURT: Be seated, please. My apologies for our
3 late start. We had lengthy hearings this morning that didn't
4 conclude until about a quarter of 1:00, so we're starting a
5 little late here because we ran over this morning.

6 So I'll take appearances in the Superior case, please.

7 MR. ROBERTS: Your Honor, Steve Roberts for the
8 Debtor.

9 I'd like to advise you we've got a couple parties, TAE and
10 TAG, out in the hallway. I guess they're very close to a
11 settlement in a major piece of this, so we would ask the Court
12 after announcements to give them a few more minutes. It could
13 shorten this hearing for hours if they reach an agreement.

14 THE COURT: Other appearances, please?

15 MR. GOOD: Kevin Good and Billy Leonard for Aviation
16 Parts Supply.

17 THE COURT: Thank you.

18 MR. PARHAM: David Parham for the Unsecured Creditors'
19 Committee.

20 MR. OKIN: Matthew Okin for Xi'an Free Sky Aviation,
21 the buyer.

22 THE COURT: All right.

23 MR. ROBERTS: Your Honor, I should have also announced
24 my partner Duane Brescia is here with the Debtor.

25 THE COURT: Good.

1 MR. ROBERTS: And we've been advised the parties that
2 have been consulting do have a deal, so we are ready to
3 proceed.

4 THE COURT: Excellent. Other appearances, please?

5 MR. WINIKKA: Good afternoon, Your Honor. Dan
6 Winikka, Jones Day, on behalf of Dr. Kübler, Insolvency
7 Administrator for Thielert Aircraft Engines, GmbH.

8 MR. SALOMON: Good afternoon, Judge. Chester Salomon
9 from Becker Glynn in New York representing TAG and its
10 Insolvency Administrator, Dr. Ahrent.

11 THE COURT: Very well.

12 MR. NICHOLS: Good afternoon. Nathan Nichols from
13 Sullivan and Holston on behalf of AirSure Limited.

14 THE COURT: All right. We had some parties request
15 the opportunity to appear, I guess one party, telephonically.
16 So let me patch Ms. Taylor in.

17 (Telephonic appearance connected.)

18 MS. TAYLOR: Ann Taylor.

19 THE COURT: Ms. Taylor, this is Judge Houser. We're
20 taking up the Superior matter this afternoon.

21 MS. TAYLOR: Thank you very much, Your Honor.

22 THE COURT: All right. Mr. Roberts, are you ready to
23 proceed?

24 MR. ROBERTS: Yes, Your Honor. We have several
25 different motions, but this would not be the Superior Air Parts

1 case if we did not have surprise hit us all on the eve of
2 another hearing, and we did, late last week. Under our plan,
3 we had provided for Thielert Aircraft Engines, which we call
4 TAE, to be paid \$500,000 on their claim. We had what we
5 thought was a Rule 11 agreement, where they'd agreed to vote
6 for the plan.

7 Last Thursday, Dr. Kübler, the German insolvency
8 administrator, filed a ballot rejecting the plan, creating a
9 host of issues for the parties to get the plan confirmed today.

10 Counsel for TAG, Thielert Aircraft -- Thielert AG, the --
11 our parent corporation, and they have been negotiating between
12 themselves as to the relative payout between themselves, which
13 would not affect each other, in order to solve this problem.
14 We've been advised they have a settlement. If the Court will
15 allow us, we'd like for them to announce the settlement that
16 they've made.

17 THE COURT: Please. Mr. Salomon?

18 MR. SALOMON: Thank you, Judge. Judge, I have been
19 communicating with representatives of TAE in the hallway today
20 and have spoken with Dr. Ahrent in Germany concerning a
21 resolution of the dispute between the TAG and TAE claims. And
22 we have come to a resolution that we want to read on the record
23 of the Court. It does not affect the plan of reorganization in
24 the sense that the distributions will be as the plan states,
25 but I think it's important for the Court to know the elements

1 of this, and they are as follows.

2 That TAE agrees to accept the relief that has been sought
3 by the Creditors' Committee motion that was filed yesterday
4 concerning the allowance of the claim for voting purposes and
5 concerning further the Rule -- the so-called Rule 11 agreement
6 that had been signed in mid-July by TAE representatives. ATAE
7 representatives, the Committee, and the Debtor. And there is
8 -- and it will also change its vote, TAE will change its vote
9 to a vote in favor of the Chapter 11 plan.

10 Dr. Ahrent, as Insolvency Administrator, agrees that, of
11 the dividend that TAG shall receive from the Superior case
12 pursuant to the confirmed plan, he -- the Insolvency
13 Administrator will pay to TAE's insolvency administrator, Dr.
14 Kübler, the sum of \$300,000. That's American dollars. This is
15 all subject to a final order confirming the plan.

16 That's -- that is the deal that has been arrived at today.
17 Did Your Honor have any questions?

18 THE COURT: I do not.

19 MR. SALOMON: Thank you.

20 THE COURT: I would like counsel for TAE to confirm
21 that that's his understanding of the agreement.

22 MR. WINIKKA: Sure, Your Honor. Dan Winikka, again,
23 for the record.

24 That is correct, with, I think, one minor tweak. Mr.
25 Salomon indicated that we agreed to accept the relief as stated

1 in the Creditors' Committee's motion. I mean, I think,
2 fundamentally, we're talking about the same thing, but what TAE
3 has agreed to, or rather the Insolvency Administrator has
4 agreed to, is to change its vote to accept the plan. I mean, I
5 think fundamentally that is the relief the Creditors' Committee
6 were seeking. But, you know, if you technically look at the
7 motion, they were asking for the Court to enter an order, you
8 know, not counting our vote and other issues.

9 So, just with that clarification, though otherwise as
10 stated on the record, that is the deal we've agreed to.

11 THE COURT: Excellent. Mr. Salomon?

12 MR. SALOMON: That clarification is acceptable to TAG,
13 Your Honor.

14 THE COURT: Very well. All right. Mr. Roberts?

15 MR. ROBERTS: Your Honor, I'd like to proceed with a
16 couple other announcements. We've uploaded an order confirming
17 the plan in which we've made a modification to address the
18 insurance companies' objections, but I have a copy for you as
19 well.

20 THE COURT: Have you uploaded it or filed it?

21 MR. ROBERTS: I don't recall which we did.

22 THE COURT: We prefer things not be uploaded until
23 after hearings are concluded.

24 MR. ROBERTS: I just can't, off the top of my head,
25 know. I know what we've been doing is sending things to

1 chambers, and I'm not sure which that is.

2 THE COURT: Fair enough.

3 MR. ROBERTS: Your Honor, at the same time, here's my
4 exhibit book.

5 THE COURT: Thank you.

6 MR. ROBERTS: Your Honor, I've included within the
7 exhibit book certain pleadings just for the convenience of the
8 Court, and in the exhibit book, the first two are the amended
9 disclosure statement and our amended plan, --

10 THE COURT: All right.

11 MR. ROBERTS: -- which have not been changed since
12 they were filed and voted on.

13 THE COURT: Very well.

14 MR. ROBERTS: What we did, the -- under the plan, we
15 had proposed to assume the obligations under our insurance
16 policies to pay for defense costs. And there was a dispute
17 with the insurers whether our obligations under those policies
18 were broader, whether they would include paying deductibles for
19 parties that had not waived their claims, or whether that was
20 an obligation to the Plaintiff, not to the insurance company.

21 So what we did in Paragraph 27 of the order is we agreed to
22 a modification. Whereas Paragraph 7.1 of the plan had referred
23 to our assuming -- I will read what it did say. "The
24 Reorganized Debtor will assume any and all reimbursement
25 obligations of the Debtor under the liability insurance

1 policies listed on Exhibit 1." And 'reimbursement obligations'
2 was fairly narrowly defined for defense costs. We have simply
3 eliminated that, any qualification, and said, "We shall assume
4 the liability insurance policies listed on Exhibit 1." The
5 insurance companies had pointed out we had missed some policy
6 numbers on some co-insurance. We added those.

7 That -- and we would say that modification, if anything,
8 makes it more beneficial to all the other creditors, because it
9 eliminates any possibility of there being contingent claims on
10 the Creditors' Trust.

11 So that's what we've put in the order.

12 Also, as for the taxing authorities, Coppel and other
13 taxing authorities, they wanted a clarification. We don't
14 think it's a change. All they have is a postpetition
15 administrative claim. The final paragraph of the proposed
16 order confirming the plan, what we had done in the plan is we
17 had treated them as administrative claimants so they'll be paid
18 when due, which is next January or February, the personal
19 property taxes. The taxing authority communicated with us and
20 said, "Well, what about retaining our lien?" and raising
21 several other issues. So we agreed to the language in
22 Paragraph 51, basically saying they will be paid when due and
23 you are entitled to your liens.

24 THE COURT: All right.

25 MR. ROBERTS: Those are the two modifications to the

1 plan, Your Honor, which we submit are not such modifications
2 that would require renote or revoting to the other parties.

3 THE COURT: Does any party want to be heard in
4 connection with the two proposed modifications to the plan?

5 A VOICE: No, Your Honor.

6 THE COURT: Very well. Please.

7 MR. ROBERTS: Your Honor, we have a motion by TAG to
8 count its vote. TAG voted for the plan. Yet APS, at the time,
9 I believe, they amended the disclosure statement, filed a suit
10 and objection to TAG's claim. So TAG voted for the plan, and
11 -- however, in our ballot summary, which I guess I should have
12 pointed out before now, which is Exhibit M in the book, --

13 THE COURT: All right.

14 MR. ROBERTS: -- we categorize TAG as being a ballot
15 that was cast that we would not count because it was not an
16 allowed claim.

17 THE COURT: Right.

18 MR. ROBERTS: In your rulings, where we would be
19 without that relief is a single creditor class who has not
20 technically voted -- actually, they technically voted -- who
21 has not voted against the plan and who has not objected to the
22 plan. In fact, they've done something one step more, which is
23 they've tried to vote for the plan. And under the prior
24 rulings of this Court, as I understand it, you have ruled in
25 the past that a creditor who, as a single-creditor class, who

1 --

2 THE COURT: I have not held that.

3 MR. ROBERTS: Okay. I will -- we will -- then they
4 can proceed with the motion.

5 What I was getting to is we don't think it matters. But if
6 it does matter, then we need to proceed with the motion.

7 THE COURT: I mean, if you can refresh my
8 recollection. But no, I don't believe that a non-voting class
9 is an acceptance.

10 MR. ROBERTS: I do have that citation, Your Honor.

11 THE COURT: And it's a case of mine?

12 MR. ROBERTS: In fact, I've got the case. It's *In re*
13 *John Link*, and then you cite to the Tenth Circuit case, if I
14 can -- yes, Your Honor. Can I--?

15 THE COURT: Please.

16 MR. ROBERTS: I think it's in more than one place. I
17 spotted it in Paragraph 20, where you cite the Tenth Circuit
18 for the proposition that, if they don't object and they don't
19 vote against it and they're a single-creditor class, they're
20 deemed to have accepted the plan.

21 In fact, the Tenth Circuit opinion says that the creditor
22 itself is deemed to have accepted the plan. And I have that
23 opinion as well.

24 (Pause.)

25 THE COURT: I have absolutely no recollection of this

1 case at all. Are you sure it's my case?

2 MR. ROBERTS: Boy, I hope so, Your Honor, if I handed
3 it to you.

4 THE COURT: Well, I mean, it says it is, but --

5 MR. ROBERTS: Yes. Well, all we have -- all there was
6 was a Lexis cite, Your Honor. I don't believe there's a
7 Reporter's cite.

8 (Counsel confer.)

9 THE COURT: I have absolutely no recollection of this
10 case.

11 Well, it wouldn't have been me. It's the Amarillo
12 Division. So --

13 MR. ROBERTS: There's another Judge Houser?

14 THE COURT: No. That would have been Judge Jones out
15 in Amarillo. So I think there is an error in terms of this
16 being a decision of mine. I've not ever sat out in our
17 Amarillo Division. But certainly it's a decision from the
18 Northern District of Texas, --

19 MR. ROBERTS: Okay.

20 THE COURT: -- I'll grant you that.

21 MR. ROBERTS: Your Honor, I would just ask at this
22 point we just carry that motion with the confirmation hearing,
23 so if the Court deems it necessary to rule on the motion in
24 connection with confirmation, I would ask that we can handle it
25 that way.

1 THE COURT: All right.

2 MR. ROBERTS: We would ask that we proceed at this
3 point, then, with our confirmation. There are other motions on
4 file today, but it seems to us that's the next order of
5 business.

6 THE COURT: I agree.

7 MR. ROBERTS: Okay.

8 THE COURT: Mr. Leonard?

9 MR. LEONARD: Your Honor, if I may interject. If you
10 do want to take up the motion to allow TAG's claim for voting
11 purposes, we do have some comments.

12 THE COURT: Oh, of course. But I had just understood
13 Mr. Roberts to suggest that we defer that.

14 MR. ROBERTS: That we carry it with the plan, so
15 whatever evidence already is put on in connection with the
16 plan, we can use with that motion.

17 THE COURT: Any objection to that?

18 MR. LEONARD: No, Your Honor.

19 THE COURT: Very well.

20 MR. GOOD: And Your Honor, if I may be heard. We
21 filed a motion regarding the bid procedures, on APS's status as
22 a back-up bidder.

23 THE COURT: Right.

24 MR. GOOD: I just wanted to bring that to the Court's
25 attention. It would follow on, I presume, after the

1 confirmation, but I didn't want to lose track of that in this
2 process.

3 THE COURT: No, no, no. And we've got also your
4 disclosure statement and we've got a number of things on the
5 docket for today.

6 MR. GOOD: Yes. Yes.

7 THE COURT: Right.

8 OPENING STATEMENT ON BEHALF OF THE DEBTOR

9 MR. ROBERTS: Okay. Before proceeding with evidence,
10 Your Honor, I'd like to set a framework on what we are going to
11 present today and what we believe the issues are. And I think
12 what this Court views the issues are through today may depend
13 on how long this hearing is going to be.

14 And I believe the Creditors' Committee also would like to
15 make an opening comment as well.

16 The way we see it is we have a company called Aviation
17 Parts Supply who was assigned a \$31,000 unsecured claim from
18 Superior's own law firm, their own lawyers, and has since that
19 time attempted to acquire this company. Not by bidding higher
20 than anyone else, but by using every legal tactic that they've
21 been able to come up with to thwart every other plan.

22 What we have here is very straightforward. Under this
23 plan, under the Debtor's and the Committee's plan, we have a
24 purchaser that's going to pay \$7 million in cash on the
25 effective date as a condition of the plan being effective, and

1 that money is being used to pay creditors. Creditors are not
2 relying on what happens with Superior, the Reorganized
3 Superior, after they've been paid.

4 Another feature of the plan is that there were certain
5 parties that had open purchase orders that were given a choice:
6 You can either accept substitute purchase orders with the
7 Reorganized Debtor and take a credit risk, or you can choose
8 not to and file your claim. We have filed a list as required
9 by the plan of those that we are rejecting. However, there are
10 many that we have assumed, and the testimony we'll be hearing
11 is those creditors, not a single one of them asked for pro
12 formas or projections, were not relying on anything other than
13 the choice given to them.

14 The thrust of APS's objection is that the Chinese have
15 filed a disclosure statement that says their idea for this
16 company is to rebuild the engine business, and their
17 interpretation is they're not going to do that at all, that the
18 pro formas that we had -- intend to present as evidence show
19 that's going to take a long time.

20 Now, what we're going to present is the Chinese have been
21 consistent from Day One: They're buying this company. They
22 want the engines, they want the parts, they want the parts
23 business, they want the ability to export engines to China as
24 the market develops, and they are putting the money where their
25 mouth is. They've put \$700,000 down, nonrefundable. If they

1 don't fund within thirty days, we get the \$700,000, and the
2 testimony will be that would cover any loss we suffer in that
3 thirty days.

4 We have every single vendor who has voted vote for this
5 plan. We have the support of the Committee. So we believe
6 that most of APS's objection is largely irrelevant, because the
7 issue of feasibility -- is it feasible -- we believe the
8 question is: Is it feasible that the Debtor is going to pay
9 the claims of the creditors as provided in the plan? That is
10 the commitment to the creditors. That is what the creditors
11 voted on.

12 So we will put on our case; they will put on theirs. But
13 the thrust of what we believe they are putting on is of, one,
14 no relevance, and two, certainly no relevance to their claim,
15 because they have a \$31,000 unsecured claims which is being
16 paid out of the Creditors' Trust. So they are, in essence,
17 trying to file objections for all the parties that chose not to
18 file objections. They have tried to thwart this plan for all
19 those parties who are supporting the plan.

20 Thank you.

21 THE COURT: Please.

22 OPENING STATEMENT ON BEHALF OF THE CREDITORS' COMMITTEE

23 MR. PARHAM: Your Honor, just very briefly. The --
24 oh, I would like to introduce, by the way, some of my Committee
25 members. The Committee Chair, Ron Weaver, is here. Mr. Chuck

1 Dedmon is here also. Mr. Dedmon is a former president of
2 Superior Air Parts and is the representative of one of the
3 largest creditors in the case. And Tim Archer, who's also a
4 former president of Superior Air Parts and has been a
5 consultant to our Committee. So I did want to want to
6 recognize them, and they've all worked very hard during the
7 course of this case.

8 To the issue -- to the extent today that the issue is
9 feasibility, the Committee's view of this is that this plan is
10 feasible, for a number of reasons. We think that the deposit
11 is significant.

12 With respect to the cash contribution, although it's not
13 here presently, you know, we have confirmed through our Hong
14 Kong offices that what they're saying in terms of the
15 procedures for getting it out of China, getting the money out
16 of China, in fact do exist, and our belief is that it's not a
17 question of it can be gotten out of China, it's a question of
18 when. And frankly, they appear to be moving along and getting
19 their regulatory approvals quicker than we would have thought
20 that they would. So we're very comfortable. We think it's
21 simply really a formality at this point. Primarily, the
22 Chinese government, as I suspect Mr. Tong will say, just wants
23 to know that it's a real company that they're buying and it's a
24 real deal, and that's a test that's easily satisfied.

25 We would also note, as Mr. Roberts has just indicated,

1 there were no objections to this from any creditors who are
2 taking a payout over time. Our view of Brantly and --

3 (Static noise.)

4 THE COURT: Does somebody have a BlackBerry or some
5 other device close to a microphone? We're picking up some
6 static.

7 All right. Please. Thank you.

8 MR. PARHAM: Yes. Our view of Brantly is that, you
9 know, they're making this \$7 million contribution in full
10 knowledge of the fact that additional funding is going to be
11 necessary for this company, and that they would not be making
12 this \$7 million payment if they didn't in fact intend to follow
13 up with the additional funding that will be necessary to
14 rebuild the company over some period of time.

15 More significantly, the Committee thinks that because of
16 the long-term vision that this purchaser has, that it makes it
17 a very good strategic fit for them and it gives them incentive
18 and motivation to in fact perform.

19 And the final point that we would note is that there seems
20 to be some -- there seems to be a lot of agreement within the
21 industry that the engines are worth significantly more with the
22 piece parts business up and operating. And so to the extent
23 that the focus of the long-term Brantly plan may be on engines,
24 there is certainly significant strategic and business reason
25 for them to rebuild the piece parts business, as they have

1 indicated that they intend to do.

2 And so, with that, I would just say that the Committee
3 supports this plan. We think it's a great deal for the
4 Unsecured Creditors. The trade creditors have voted
5 overwhelmingly for this plan. I'm delighted that TAE and TAG
6 were able to work out their differences and also support it. I
7 would note simply that everyone with an economic interest, with
8 the exception of, again, APS, is in favor of this plan.

9 THE COURT: Very well. Other parties?

10 MR. OKIN: Your Honor, if I might be heard briefly?

11 THE COURT: Of course.

12 OPENING STATEMENT ON BEHALF OF THE PROPOSED PURCHASER

13 MR. OKIN: Your Honor, Matthew Okin, O-K-I-N, for the
14 purchaser, Xi'an Free Sky Aviation. And I also would like to
15 introduce to the Court Mr. Tom Tong, who is also an attorney
16 for the purchaser. Mr. Tong is a Texas lawyer who also happens
17 to be fluent in Chinese and is key to the communication, my
18 ability to communicate with our client.

19 I thought I'd take just a minute, Your Honor, to just give
20 you a little perspective from our client.

21 THE COURT: Please.

22 MR. OKIN: You know, they first found out about this
23 opportunity, I believe, in late May. And the chairman of the
24 company, who doesn't speak any English, immediately flew over
25 to Dallas with Mr. Tong from China to meet with Mr. Abercrombie

1 and Mr. Roberts in order to find out about this opportunity. I
2 think when they first got involved they were looking to
3 purchase an engine program that they could use for China. But
4 I think as they've learned more about this business, they've
5 determined, as Mr. Parham stated, that the engine business is
6 worth a lot more with the piece parts business. And for that
7 reason, we submitted a bid for the entire business, and that's
8 what we've been interested in.

9 As we've been involved in this process, though, it has
10 become clear that APS essentially will use any means it can to
11 try to thwart this sale, as it has with every other prior sale
12 that isn't theirs. And although we want to do whatever we can
13 to support this process and get this plan confirmed, we've been
14 a little reluctant to try to share -- to share with them the
15 level of detail that they want about future business plans that
16 we might have for this business, because, so far, everything
17 that we tell them seems to be used against us. I don't believe
18 any of that information is really necessary for the decision
19 that the Court really has to make here. I think what Mr.
20 Roberts said is exactly the case.

21 Nevertheless, we spent the last two days in depositions,
22 discussing projections for the business: How did Mr.
23 Abercrombie know that the Chinese would continue to fund the
24 business two years from now? How did they know that the
25 program would work? And Your Honor, I would submit, as Mr.

1 Roberts did, that all of that is irrelevant, and I would
2 actually ask Your Honor, if you would, to consider ruling on
3 that issue before we start the evidence, because I think it
4 will immensely shorten the hearing. I've got clients over in
5 China who have basically told us, call them as soon as the
6 hearing is over, wake them up at any time, they're anxious to
7 find out about this purchase.

8 As you'll see in the evidence, the final piece of
9 regulatory approval in China for us to be able to wire the \$7
10 million over from China is we need a signed confirmation order.
11 They want a copy of a confirmation order the minute they can
12 get it. They want to get the money over. They want to close on
13 this sale.

14 The plan is drafted that August 31st is our adjustment date
15 for working capital. As of August 31st, we may not own the
16 business, but if we haven't closed, the money that's still
17 going to be spent will be ours. We won't be running it. So
18 the sooner we can get a confirmation order entered and the
19 sooner we can get the money wired, the sooner we can get on
20 with running with business. And for that reason, I'd urge the
21 Court to consider shortening this hearing by ruling on what
22 everybody else seems to recognize, which is that the future
23 performance of this business, while important to my client, is
24 really not an issue that the creditors of this estate have to
25 concern themselves with.

1 Thank you, Your Honor.

2 THE COURT: Very well. Please. Mr. Good?

3 OPENING STATEMENT ON BEHALF OF AVIATION PARTS SUPPLY

4 MR. GOOD: Your Honor, Kevin Good for Aviation Parts
5 Supply. I'll be brief.

6 The burden of proof on the confirmation hearing will rest
7 with Superior and the proponents. And I'm very interested in
8 hearing the evidence, and we will challenge some of the
9 evidence. We will move to exclude some of the evidence based
10 upon the deposition testimony, one of them that I took
11 yesterday, and I'll address that to the Court.

12 And I think, to highlight the evidence that I expected to
13 see that I think will not be available in this hearing, will be
14 the availability of the funds, the commitment of the funds, the
15 financial commitment of the purchaser. Just to highlight the
16 type of evidence that I'm looking for that I, in some
17 instances, I will be objecting to, and then it will be up to
18 the Court to decide whether or not to accept that.

19 In terms of what we know about the Brantly plan, we know
20 nothing about the Brantly plan. The deposition of Mr.
21 Abercrombie that I took on Monday, he created the projections
22 by himself with no input from Brantly. Brantly is not here
23 today. There's a lawyer here, Mr. Tong, from Houston, who is
24 representing Brantly.

25 So I highlight to the Court and alert to the Court the

1 existence of credible evidence on the financial feasibility,
2 not in the next year, but to pay the balance of the \$7 million.
3 That is, \$6.3 million.

4 Thank you.

5 THE COURT: Any other?

6 OPENING STATEMENT ON BEHALF OF AIRSURE LIMITED

7 MR. NICHOLS: Your Honor, AirSure had a limited
8 objection to the confirmation of the plan, and based on our
9 conversation today with the Debtor, we believe that is
10 resolved. It was based on lack of clarity from our perspective
11 of whether the Reorganized Debtor was going to assume fully the
12 insurance policies or just part of the insurance policies, and
13 it our understanding, based on the modification today and after
14 conversation, that they will be assuming them in full. And if
15 that's the case, then that takes care of our limited objection.

16 THE COURT: Excellent.

17 MR. NICHOLS: Thank you, Your Honor.

18 THE COURT: All right. Are we ready to proceed?

19 MR. ROBERTS: Your Honor, I would like to move to
20 introduce into evidence all of our unopposed exhibits, which
21 would be all of the exhibits except E, G, and H.

22 THE COURT: Any objection to Exhibits A, B, C, D, F,
23 I, J, K, L, and M?

24 MR. GOOD: No objections from APS, Your Honor.

25 THE COURT: Very well. The Court will admit those

1 exhibits.

2 (Debtor's Exhibits A, B, C, D, F, I, J, K, L and M are
3 received into evidence.)

4 MR. ROBERTS: Your Honor, I would address the Court's
5 attention to Exhibit M, our ballot summary and our
6 certification of ballots.

7 THE COURT: All right.

8 MR. ROBERTS: We have a ballot summary by class, and
9 we believe the ballot summary reflects for the Court that all
10 classes are either deemed accepted or have accepted the plan
11 except the interests in the Debtor, which are deemed to reject
12 since they're not receiving anything under the plan.

13 There is one correction. Ballot Summary #5, Secured Claim
14 of Tygris Vendor Finance. It says "Deemed Accept;" however,
15 that was the one class of secured claims that we reserved the
16 right to reject their contract, return their goods, and give
17 them both a secured and an unsecured claim, as appropriate, and
18 we exercised that. So that made them impaired, not unimpaired,
19 and they did not vote for or against the plan or object to the
20 plan.

21 THE COURT: All right. So they'll be treated in Class
22 7 for their rejection claim?

23 MR. ROBERTS: Yes, Your Honor.

24 THE COURT: All right.

25 MR. ROBERTS: And to put some materiality on that, I

1 think it's about -- well, it's right here -- a \$67,000 claim.

2 THE COURT: All right.

3 MR. ROBERTS: With that, I'd like to call my first
4 witness, Mr. Kent Abercrombie.

5 THE COURT: Very well. Mr. Abercrombie, if you'd come
6 forward and be sworn. You're going to take this chair. Before
7 you sit down, if you'd raise your hand and be sworn in.

8 KENT ABERCROMBIE, DEBTOR'S WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. ROBERTS:

11 Q Mr. Abercrombie, Judge Houser has heard the lawyers do a
12 lot of talking in this case, but you've haven't had an
13 opportunity to testify yet, have you?

14 A Not in front of Judge Houser, no.

15 Q Okay. You are the president of Superior Air Parts?

16 A Yes, sir.

17 Q And you are also the proposed president of Reorganized
18 Superior Air Parts, both under the Debtor's plan and APS's
19 proposed plan. Correct?

20 A Yes, sir.

21 Q Could you tell us -- well, first of all, give us a brief
22 educational background, please.

23 A Graduated from high school here in Dallas, W.T. White High
24 School. Went to University of North Texas. Graduated from the
25 University of North Texas in 1992 with a Bachelor's of Business

1 Administration with a focus on Finance. Worked for a company
2 called Aviall in the aviation industry from 1987 till
3 approximately 1995. Went to work for TriStar Aerospace, also
4 in the aviation industry, which was acquired by Honeywell in
5 1999.

6 In December of 2000, I left Honeywell to join Superior Air
7 Parts as the Director of Finance & Accounting at that time. In
8 2005, I was made Vice President of Finance & Accounting for
9 Superior Air Parts. In 2006, my role was increased to include
10 operational segments, including warehouse and production. And
11 then in early 2007 I was promoted to the role of president.

12 Q And you've served as president since that time?

13 A Yes, sir.

14 Q Also, under the Debtor's plan, you are proposed as the
15 initial sole director as well the president, correct?

16 A Yes, sir.

17 Q Now, Mr. Abercrombie, you have been involved, have you not,
18 in efforts to sell this company for over a year?

19 A Yes, sir.

20 Q Okay. Let's go back and let's provide a little bit of
21 background here. The sole shareholder is -- we refer to as
22 TAG, Thielert AG, correct?

23 A Yes, sir.

24 Q Were you with the company when Thielert AG acquired the
25 Debtor?

1 A Yes, sir.

2 Q And what was the condition of the company -- when was that
3 acquisition?

4 A In March of '06.

5 Q And what was the condition of the company prior to that
6 acquisition?

7 A The company had been experiencing substantial losses of \$4
8 to \$5 million a year for a few years. We were cash-poor,
9 tapped out our working capital revolver, were in default of
10 some of the covenants associated with the loan facility, and
11 were actually on a very cash-strapped basis entering the third
12 and fourth quarter of 2005.

13 Q Okay. And what did TAG pay to acquire the company?

14 A TAG acquired the company for \$10 million.

15 Q And did they do that by acquiring debt?

16 A They bought the loan facility from PNC for \$8 million, and
17 then they paid \$2 million -- or \$1,999,999 for the sub debt of
18 the original owners, RST&W, and then \$1 for the shares.

19 Q Okay. Then, after that, what was your obligation to TAG to
20 repay that debt? How did TAG deal with that obligation?

21 A We paid them quarterly interest payments against the loan
22 facilities.

23 Q And you did that generally up to the last quarter before
24 the bankruptcy filing?

25 A Yes, sir.

1 Q Okay. Now, TAE is a sister company, also owned by TAG,
2 correct?

3 A Yes, sir.

4 Q And they had filed a proof of claim somewhere north of \$16
5 million in this case, right?

6 A Yes, sir.

7 Q What was that claim based on?

8 A The claim was based upon inventory that had been shipped
9 from TAE to Superior Air Parts.

10 Q So what was the deal between Superior and TAE on the
11 shipment and payment of inventory from TAE?

12 A TAE did not expect payment on inventory until the company
13 could achieve profitability.

14 Q And did the company achieve profitability?

15 A No, sir.

16 Q Now, just to speed this up a little bit, both TAG and TAE
17 filed for -- in German insolvency proceedings last year,
18 correct?

19 A Yes, sir.

20 Q And what effect did that have on the ability of Superior to
21 continue to operate?

22 A It removed one of our sources of capital, which was the
23 continued product flow from Thielert AE. So we began paying
24 TAE for any inventory that was purchased. We've since that
25 time had layoffs and significant inventory reductions to

1 generate the cash flow needed to sustain the company.

2 Q And did the company have any other lines of credit?

3 A No, sir.

4 Q And the company was -- what were the losses in 2008?

5 A In 2008, approximately \$4 million or so.

6 Q Okay. In connection with your efforts to try to sell this
7 company, has the company made efforts to sell the parts
8 business and the engine business both separately and together?

9 A Yes, sir.

10 Q And during that time, have you ever received a binding
11 offer for just the engine business?

12 A No, sir.

13 Q Okay. In your opinion, is the offer presented by the
14 Debtor's plan the highest and best offer for the creditors in
15 this case?

16 A Yes, sir.

17 Q Okay. Now, I would like to ask you a few questions about
18 who we refer to in the plan as Brantly. And we've heard other
19 names -- Xi'an?

20 A Xi'an Free Sky.

21 Q Xi'an? And they're all part of what we call the Brantly
22 Group, correct?

23 A Yes, sir.

24 Q When did -- you met, did you not, with the Brantly Group
25 here in Coppell in June 2009?

1 A Late May/early June, yes, sir.

2 Q Okay. Was that roughly about the time you learned of their
3 interest in acquiring this company?

4 A Yes.

5 Q Okay. And who came to Coppell to meet on behalf of
6 Brantly? Those that you can recall.

7 A Chairman Chang. Chairman Shin Jong Chang (phonetic).
8 Madam Wong.

9 Q Is that his wife?

10 A Yes, sir.

11 Q And what did they represent their roles with the Brantly
12 Group to be?

13 A Chairman Chang is the lead investor principal. And Madam
14 Wong is in the administrative/operational/accounting type
15 roles. Additionally, they brought, I believe, a gentleman
16 named Roger Zao (phonetic) for engineering, and a gentleman
17 named Vernon Cantrell, who is the president of Brantly
18 Helicopter based in Vernon, Texas.

19 Q Okay. And Mr. Tong was there also to assist in
20 translation, correct?

21 A Yes, sir.

22 Q And tell us generally about that meeting.

23 MR. GOOD: Objection, Your Honor, to the extent it
24 calls for hearsay from the Brantly visitors.

25 THE COURT: Well, overruled at this point. You may

1 object if hearsay testimony is elicited.

2 THE WITNESS: I'm sorry. Can you repeat the question?

3 BY MR. ROBERTS:

4 Q Well, I'll just change the question. Did the Brantly Group
5 express interest in buying the company?

6 A Yes, sir.

7 Q Okay. Did they take a tour of the facility?

8 A Yes, sir.

9 Q Did they ask you questions about operations and the
10 financial situation with the company?

11 A Yes, sir.

12 Q Okay. And did they express to you what their goal was in
13 their interest in acquiring the company?

14 A Yes, sir.

15 Q And what did they tell you that was?

16 MR. GOOD: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained.

18 MR. ROBERTS: Okay.

19 BY MR. ROBERTS:

20 Q Mr. Abercrombie, do you believe it's more likely than not
21 that the Chinese, the Brantly Group, will fund this plan?

22 A Yes, sir.

23 MR. GOOD: Objection, Your Honor. Calls for
24 speculation.

25 THE COURT: No foundation has been laid. Sustained.

1 MR. ROBERTS: Okay.

2 BY MR. ROBERTS:

3 Q Mr. Abercrombie, would you identify for me --

4 MR. ROBERTS: Excuse me one moment. I lost my place.

5 BY MR. ROBERTS:

6 Q In the exhibit book in front of you, would you turn to
7 Exhibit H? No, excuse me. Exhibit E. Would you identify that
8 document for me?

9 A These are pro forma financial projections for three years
10 that I developed, including the income statement, balance
11 sheet, and cash flow.

12 Q And did you develop them under the terms of the plan
13 proposed by the Debtor? In other words, did you take into
14 account the payment of creditors and the terms of the plan in
15 creating these pro formas?

16 A Yes, sir.

17 Q Okay. What was your purpose in preparing these pro formas?

18 A I wanted to give projections that would show the potential
19 financial commitments of the interested buyer for the
20 additional funding requirements needed for inventory as well as
21 operations.

22 Q Okay. And did you -- what is the correlation between this
23 -- well, --

24 MR. ROBERTS: Well, first of all, I'd move for the
25 admission of Exhibit E, Your Honor.

1 THE COURT: Objection?

2 MR. GOOD: Your Honor, the Exhibit E is -- are
3 projections, as I understand it, that Mr. Abercrombie has
4 prepared that do not include many of the business points that
5 are contained in the feasibility section, Section 9 of the
6 disclosure statement. And as a result of that, it does not
7 represent what I refer to and what -- the business plan, and we
8 object to it based upon relevance.

9 THE COURT: Response? Give me one second. Ms.
10 Salcido has e-mailed me.

11 (Pause.)

12 THE COURT: Let me just -- I overlooked a case. I
13 want to be sure. Is anyone here in the Hucklebridge case?

14 (No response.)

15 THE COURT: Very well. Please.

16 MR. ROBERTS: I'm sorry. Was it overruled, Your
17 Honor?

18 THE COURT: I haven't --

19 MR. ROBERTS: Oh, okay.

20 THE COURT: I asked you for a further response.

21 MR. ROBERTS: His objection is he says he thinks it's
22 inconsistent with the business plan, so we're going to need to
23 introduce it and go through why it is not inconsistent with the
24 business plan. Or whether it's consistent with the business
25 plan or not, it's still relevant.

1 THE COURT: I'm going to admit it subject to a motion
2 to strike if it's not established to be consistent with the
3 business plan.

4 (Debtor's Exhibit E is received into evidence.)

5 BY MR. ROBERTS:

6 Q Okay. Mr. Abercrombie, would you turn to Page 15 of
7 Exhibit A, the Debtor's Third Amended Disclosure Statement?

8 A Yes, sir.

9 Q Would you read to us the third paragraph under "Summary of
10 the Debtor's Plan"?

11 A "The plan provides for the resumption and continuation of
12 the Debtor's business, including the assembly and sale of piece
13 parts, cylinder assemblies, and Vantage engines at its facility
14 in Coppell, Texas or nearby."

15 Q Okay. And did you incorporate that portion of the business
16 plan into the pro forma in Exhibit E?

17 A Yes, sir.

18 Q Okay. While we're on the disclosure statement, let's go
19 forward with some of the -- I have some other questions. Go to
20 Page 16 at the top of the first paragraph of that disclosure
21 statement. Now, this is a disclosure statement signed by you,
22 correct?

23 A Yes, sir.

24 Q And that first paragraph, if I can shorten it a bit,
25 provides that part of the Debtor's business plan is to resume

1 assembly and sale of piece parts, cylinder assemblies and
2 Vantage engines at the facility in Coppell. Correct?

3 A Yes, sir.

4 Q Another part of the business plan is to take advantage of
5 what Brantly believes is a rapidly growing market for FAA-
6 certified engines and parts. That's part of the business plan.
7 Correct?

8 A Yes, sir.

9 Q And did you take that into account in preparing Exhibit E?

10 A No.

11 Q You didn't take into account any development of engines for
12 export in China?

13 A Some Vantages in Years 2 and 3. Yes, sir.

14 Q Okay. We will go back to that. Please go to Page 26 of
15 the disclosure statement.

16 A Yes, sir.

17 Q Do you see where it says, the bottom paragraph, "Funding of
18 Continuing Operations Under the Plan"?

19 A Yes.

20 Q Do you see where it says, "Management estimates that an
21 additional \$4 million in capital or credit may be needed to
22 revive the piece parts business and to fund the cost of the
23 engine programs based on Superior's historical financial
24 performance"?

25 A Yes, sir.

1 Q And did the pro formas that you prepared in Exhibit E, are
2 they consistent with that estimation?

3 A Yes, sir.

4 Q Okay. Now, at the risk of causing a little bit of
5 confusion, let's go back a minute. "Management estimates an
6 additional \$4 million of capital will be needed." That's you,
7 correct? That's your estimate?

8 A Yes, sir.

9 Q Did you give that estimate to the Chinese in the very first
10 meeting?

11 A Yes, sir.

12 Q And that estimate was in the disclosure statement, as we
13 see, correct?

14 A Yes, sir.

15 Q And you're showing in this pro forma approximately \$4
16 million in cash needs in the first year under your business
17 plan. I mean, under the pro formas. Correct?

18 A Yes, sir. A little bit less, but yes.

19 Q Okay. We'll go to the pro formas in a moment.

20 On Page 39 of the disclosure statement, the second
21 paragraph contains various representations by Brantly about his
22 intention of making the acquisition, to take advantage of the
23 Chinese market as being one of those. Correct?

24 A Yes, sir.

25 Q And did the Chinese leave it to you to determine how to

1 achieve that goal? The timing? The costs? The start-up
2 costs? The estimates of how long it would take? The details?

3 A I'm not sure I follow the question.

4 Q Well, if the goal stated is -- one goal is to take
5 advantage of the rapidly expanding market for engines, that
6 would need to incorporate a program to at some point start
7 developing engines. Correct?

8 A Yes, sir.

9 Q And does your pro forma -- and did the Chinese leave it to
10 you to determine the details of how to achieve that goal --

11 A Yes.

12 Q -- through the operation of Superior?

13 A Yes, sir.

14 Q And is your pro forma in Exhibit E a conservative estimate
15 of how to move towards that goal?

16 A In my opinion, yes.

17 Q Now, you mentioned earlier Brantly Helicopter. Who is
18 Brantly Helicopter?

19 A Brantly Helicopter is a small helicopter manufacturer in
20 Vernon, Texas.

21 Q And is it owned by the Brantly Group?

22 A Yes, sir.

23 Q And did you visit the Brantly facility?

24 A Yes, sir.

25 Q Did you determine whether or not the Brantly Group has been

1 providing capital to that facility since it acquired it?

2 A Yes, sir.

3 Q And what did you determine?

4 A That they had been funding the operations as needed.

5 Q And describe the operations of Brantly Helicopter in
6 Vernon.

7 A It's an approximately 21- or 22-person operation that does
8 in-house machining and assembly of the small B-2B helicopter
9 for the general aviation market, primarily in China currently.

10 Q Okay. And do part of your projections include a program to
11 start developing the Superior engine for the Brantly B-2B two-
12 seater helicopter?

13 A Yes, sir.

14 Q Okay. And did you take a trip to China since the
15 disclosure statement plan was filed with Mr. Mike Bean of APS
16 and meet with the Brantly Group?

17 A Yes, sir.

18 Q And did you tour any of the facilities of the Brantly Group
19 --

20 A Yes.

21 Q -- for manufacturing helicopters?

22 A Yes, sir.

23 Q And what did you observe?

24 A They were empty buildings at the time. They were
25 approximately a week away from move-in. But the facilities

1 were there and -- to house an operation for the manufacturer,
2 but there was nothing in the buildings as of yet.

3 Q Were there Gantry cranes?

4 A Yes, I believe there's one.

5 Q So there's a large crane, --

6 A Yes.

7 Q -- empty building, and so production of helicopters had not
8 started yet?

9 A Correct.

10 Q Did you take that into account in developing a plan for
11 providing helicopters in the future for the Brantly Group's --

12 A Timing purposes? Yes.

13 Q Yes. Okay. So could you tell us, generally, in your
14 assessment, what is the path for the Reorganized Superior to
15 develop and export engines to China for the Chinese market?

16 A The current certified Vantage engine is a 180-horsepower
17 horizontal-sitting engine. We've got to reconfigure it to be a
18 vertical configuration for the B-2B, which will necessitate the
19 development of approximately thirty parts, either development
20 or modification of approximately thirty parts that will need to
21 get developed, engineering approval from the ACO Division of
22 the FAA. We'll need to manufacture them, inspect them, and to
23 add them to our production certificate for the Vantage engine,
24 or to develop a new type certificate and production, we'll have
25 to show that we can consistently manufacture, inspect, and

1 assemble the engine.

2 Q And will that take time?

3 A Yes, sir.

4 Q And do you have a conservative estimate of how long that
5 time will take built into your pro formas as Exhibit E?

6 A I believe so, yes.

7 Q Okay. Now, after -- you've entered into a letter of intent
8 with Brantly to acquire Superior, correct?

9 A Yes, sir.

10 Q And does that give Brantly an opportunity to do due
11 diligence or cancel the deal if they weren't satisfied with due
12 diligence?

13 A Yes, sir.

14 Q And did they complete their due diligence?

15 A Yes, sir.

16 Q And did they go hard? In other words, do they have their
17 money up now, no longer subject to due diligence?

18 A Yes, sir.

19 Q And have they funded and do you have in your possession the
20 \$700,000 down payment required by the plan?

21 A Yes, sir.

22 Q Okay. Do you have any reason to believe, based upon your
23 experience in dealing with Brantly, that they do not intend to
24 fund?

25 A No, sir.

1 Q Do you have any reason to believe they do intend to fund?

2 A Yes, sir.

3 Q And what are those reasons?

4 A They've acquired the Brantly Helicopter Company to develop
5 for the Chinese market. The engine that they need for that
6 helicopter is very specific, and the pricing from one of our
7 competitors is substantial. They've developed the facilities,
8 hired some personnel from Harbin, which is a helicopter
9 manufacturer in China, to help them with the start-up of this
10 operation, and their vision for the Chinese aviation market is
11 somewhat reliant upon the development of the engine program.

12 Q Okay. Your competitor that sells engines, is that
13 Lycoming?

14 A Yes, sir.

15 Q And how much are they selling the engines for?

16 A I believe it's \$60,000.

17 Q And what do you project that Superior can sell those
18 engines for?

19 A Approximately \$30,000.

20 Q Now, in the disclosure statement, Brantly represented that
21 they had a goal of selling 150 engines a year, up to 500
22 engines a year. Is that generally correct?

23 A I believe so. Yes, sir.

24 Q And without doing the specific math, that could lead to a
25 substantial cost savings of millions of dollars to Brantly in

1 the future, could it not?

2 A Yes, sir.

3 Q Do you believe that is one of the reasons why they are
4 motivated to do this purchase?

5 A Yes, sir.

6 Q Now, let's shift over to the piece parts business. Where
7 is the market for piece parts in the world?

8 A Primarily North America.

9 Q What percentage of the kind of piece parts you sell is in
10 North America?

11 A Approximately 80 percent of our business in the market is
12 located in North America.

13 Q If the Chinese simply did nothing but kick-start,
14 reinvigorate and get the piece parts business again going, do
15 you have an opinion whether or not the Reorganized Brantly
16 [sic], under your management, could make that a profitable
17 stand-alone business?

18 A Focusing only on the piece parts, yes, I believe that can
19 be profitable.

20 Q So do you think that the development of the piece parts
21 business has a value to the development of the engine business?

22 A Yes, sir.

23 Q And what is that value?

24 A Any profit generated from the piece part business could be
25 used to subsidize the development of the engine programs.

1 Q Okay. And does your pro forma in Exhibit E reflect a
2 redevelopment of the piece parts business?

3 A Yes, sir.

4 Q Conservatively, how long would you think it would take for
5 the Chinese to begin selling Superior engines in China for
6 their helicopters?

7 A For the helicopters, maybe two years.

8 Q Okay. Do you know whether that was longer or shorter than
9 they thought when they first approached you?

10 A Longer.

11 Q Okay. And did you advise them of that?

12 A Yes, sir.

13 Q Did they show any hesitation that they wanted to go forward
14 with the deal based upon that?

15 A No, sir.

16 Q And do your pro formas reflect it could take that long?

17 A Yes, sir.

18 Q Now, if -- you don't know all of the possible airplane or
19 helicopter manufacturers in China, do you?

20 A No, sir.

21 Q So if Brantly, for example, could find other buyers for its
22 engines, its airplane engines, unmodified engines, would it be
23 able to -- would Superior be able to sell engines into China
24 sooner than that?

25 MR. GOOD: Objection, Your Honor. Calls for

1 speculation.

2 THE COURT: Sustained.

3 BY MR. ROBERTS:

4 Q If the Chinese found a market for aircraft engines in
5 China, how long would it take Superior to produce and export
6 those engines?

7 A We're probably six to nine months away.

8 Q You don't reflect that possibility in these pro formas, do
9 you?

10 A No, sir.

11 Q And as you sit here, you do not know the Chinese market to
12 know whether or not that's a possibility or not, do you?

13 A No, sir.

14 Q You'd agree that would be an entrepreneurial risk for
15 Brantly?

16 A Yes, sir.

17 Q Okay. Let's look at these pro formas just a little bit
18 more. I asked you generally whether you were showing where
19 they would need about \$4 million in cash in the first year.
20 Can you show us what line that shows what cash they will need
21 and just generally tell us what assumptions you made and how
22 you arrived at that number?

23 A Yeah. In Exhibit E, Page 2, which is the balance sheet,
24 the Cash line, --

25 Q At the top?

1 A At the very top, yes, sir, under Current Assets. The Year
2 1 projection on the far right is bracketed, which is a negative
3 \$3.436 million.

4 Q Okay. Now, how did you arrive at that number?

5 A We did a projection of what we've been able to do
6 historically on sales levels, used recent history that we've
7 been experiencing through the bankruptcy on sales levels for
8 the first six months of the projection. The inventory
9 requirement needed to relaunch the piece part business and
10 cylinder business was taken into account. And then the
11 expenses were estimated based upon either agreements we had
12 reached with individuals or expected reductions for certain
13 items. And also we analyzed the personnel required to restart
14 the company to meet FAA requirements as well as do the
15 necessary engine development, and laid those personnel in.

16 Q Okay. So you've got some personnel for engine development.
17 What other costs do you have for engine development as opposed
18 to piece parts?

19 A There is tooling requirements that would be reflected on
20 the Fixed Asset line. The growth in the Fixed Asset line on
21 the balance sheet will be the tooling requirements necessary
22 for that. And then there's also additional expenses in the
23 income statement for product development, for prototyping and
24 things of that nature. R&D expense.

25 Q Can you tell us, if the Reorganized Superior simply focused

1 on the piece parts business, how much less cash it would need
2 the first year, approximately?

3 A It's not easy to break out because there's shared overhead
4 and things of that nature. But cash-wise, you'd need
5 approximately \$750,000 less of inventory. You'd need less
6 personnel. You'd need less tooling development, and no product
7 development, or less product -- new product development. So it
8 could be in the neighborhood of \$1-1/2 to \$2 million less.

9 Q Okay. Now, you assisted APS in preparing the pro formas
10 for their disclosure statement, did you not?

11 A Yes, sir.

12 Q And those pro formas are a pure piece parts business,
13 correct?

14 A Yes, sir.

15 Q And those pro formas, if I'm correct, are a 12-month pro
16 forma after six months of going up to normalization, and then
17 you show the twelve months. Correct?

18 A Yes, sir.

19 Q And do you show, on a pure piece parts business which you
20 would be operating owned by APS, that you would be profitable?

21 A In that twelve-month period, yes, sir.

22 Q And in fact, owned by Brantly, they could choose to
23 conserve cash and be profitable in the same period?

24 A Yes, sir.

25 Q Okay. But this plan has an engine component, engine

1 development component.

2 A Yes, sir.

3 Q So kind of explain to me what's going -- what you're doing
4 to develop the engines in this first year.

5 A We'll need to hire the engineering personnel.

6 Q Would they be to convert the engines to a helicopter
7 engine? Is that the purpose of that?

8 A To convert it from the horizontal configuration to the
9 vertical configuration. It changes the parts -- oil drain, vac
10 tubes, gears and things of that nature. So there is new parts
11 that will have to be developed, existing parts that will have
12 to be modified, to accommodate the vertical positioning of the
13 engine. So there's engineering personnel included within the
14 pro forma to develop those items.

15 There's product -- or research and development, product
16 development. Expenses for, like I say, prototyping. Any
17 necessary outside testing. And those type of items. And then
18 the engine testing that would be required to obtain the
19 necessary certifications.

20 Q And would it cost the Reorganized Superior more to do that
21 if it didn't run the piece parts business as well? What if it
22 just shut down the piece parts business? Would it require more
23 cash to do this, or would --

24 A I'm sorry?

25 Q Would the piece parts business help fund the cost of this

1 development?

2 A Yes, in time.

3 Q So, with you as the president of the Reorganized Superior,
4 it would be your intention to -- go on. In your opinion, is
5 your pro forma inconsistent with the disclosure statement's
6 broad description of the plan for the Reorganized Superior
7 under the ownership of Brantly?

8 A No, sir.

9 Q If Brantly did not fund within thirty days of the entry of
10 an order confirming the plan, and if the Debtor was able then
11 to take the \$700,000 deposit for their failure to fund, would
12 the 30-day delay from the entry of the order to the end of that
13 30-day period, would the \$700,000 be expected to cover any
14 losses the company would suffer in that thirty days?

15 A Approximately.

16 Q Have you fully informed, to the best of your ability,
17 Brantly of all of the risk that you are aware of in connection
18 with their acquisition?

19 A I believe so.

20 Q Do you recall approximately how much the records of the
21 Debtor reflect that TAG is owed?

22 A TAG?

23 Q TAG.

24 A Approximately \$10.1 million.

25 Q And that is for the debt they've -- the remaining balance

1 of the debt they purchased in the acquisition, correct?

2 A The \$10 million debt and then the \$146,000 of the final
3 quarter interest payment that would have been due on December
4 31, 2008.

5 MR. ROBERTS: Pass the witness.

6 THE COURT: Very well. Any other -- well, I'll allow
7 -- we'll go to cross-examination. Does anyone wish to cross-
8 examine?

9 MR. GOOD: Yes, Your Honor.

10 THE COURT: Please.

11 CROSS-EXAMINATION

12 BY MR. GOOD:

13 Q Mr. Abercrombie, good afternoon.

14 A Good afternoon.

15 Q My name is Kevin Good. I represent Aviation Parts Supply.
16 I think you know that, right?

17 A Yes, sir.

18 Q All right. If I can take you back through just a few
19 numbers, on Exhibit E, I think you referred to the top line on
20 the balance sheet, and the number was \$3,436,299.

21 A Yes, sir.

22 Q Is that right?

23 A Yes, sir.

24 Q And that's -- that's, the first year of operation of the
25 Reorganized Superior, it would have a cash consumption, if you

1 will, of \$3.4 million?

2 A Yes, sir.

3 Q All right. So if the purchase price, as I understand it,
4 is \$7 million, --

5 A Yes, sir.

6 Q -- then this number would be added to the \$7 million to get
7 to what would be needed to get through the first year on a --
8 just a no-profit/no-loss type of number?

9 A Yes, sir.

10 Q Is that right?

11 A Yes, sir.

12 Q So, round numbers, \$10.4 million?

13 A Yes, sir.

14 Q Okay. On your cash flow, which is the next -- the third
15 sheet in there, your negative cash flow for Year 1 is listed at
16 \$5.16 million. Right?

17 A 5.18, yes, sir.

18 Q 5.18? Yeah, \$5.18 million. And the difference between
19 those numbers is just the cash in the company?

20 A Yes, sir.

21 Q All right. Now, you have no knowledge, you have never seen
22 a document that shows that Brantly has the ability to fund \$7
23 million, have you?

24 A I've seen documents associated with the process and what's
25 been requested, but nothing that is firm showing that the \$7

1 million is readily available.

2 Q Okay. You're talking about the Chinese documents?

3 A Yes.

4 Q Okay. We'll -- as I asked you the other day, you have no
5 personal knowledge of --

6 A No, sir.

7 Q -- that, and I -- that's an area that if I asked you any
8 questions, you would decline to answer because you just don't
9 -- don't know?

10 A That was the first time I'd seen them, yes.

11 Q Okay. That's fair. All right. Have you seen a bank
12 commitment letter from the Brantly Group or the purchaser?

13 A No, sir.

14 Q Have you seen a financial statement of the Brantly Group or
15 any one of those companies?

16 A No, sir.

17 Q Have you asked?

18 A No, sir.

19 Q Okay. Do you have any information that you could bring to
20 the Court's attention today that the Brantly Group or any one
21 of their companies has the ability to fund the balance of the
22 \$7 million, the \$6.3 million?

23 A No, sir.

24 Q And I take it, since you haven't seen it, the Brantly Group
25 has never offered any of that information to you?

1 A Correct.

2 Q Okay. Now, with respect to APS, you've met with the APS
3 bankers?

4 A Yes, sir.

5 Q You've seen the commitment letter?

6 A Yes.

7 Q Okay. And -- but you have seen none of that type of
8 information from Brantly?

9 A Correct.

10 Q Okay. Have any of Brantly's bankers visited with you?

11 A No, sir.

12 Q Now, Mr. Roberts asked you about the \$700,000 deposit.

13 A Yes, sir.

14 Q That \$700,000 is in -- is it in the Superior bank account?

15 A It's a -- yeah, it's the debtor-in-possession account.

16 Q Okay. And that money came to you from Mr. Okin's trust
17 account, right?

18 A I believe so.

19 Q Okay. So you don't know the source of those funds?

20 A Correct.

21 Q Okay. The financial projections that Mr. Roberts was
22 talking to you about -- this is Exhibit E -- these projections
23 were created by you?

24 A Yes, sir.

25 Q There was no input from Brantly?

1 A Correct.

2 Q These projections were not submitted to Brantly for their
3 review and approval?

4 A I submitted it to Mr. Tom Tong.

5 Q Okay. Did you get any feedback?

6 A Mr. Tong called to let me know he had seen them, and that
7 Chairman Chang would like to discuss it later when he comes to
8 visit.

9 Q Okay. Did he -- did anybody from Brantly say, "Your
10 pricing is wrong? Your margins are wrong? Your expenses are
11 wrong? There is a market here that you're missing?" Did you
12 get any kind of detailed input like that?

13 A The only input was that the Chinese market may have more
14 potential than what I've estimated.

15 Q Okay. And you personally have no knowledge of that?

16 A No, sir.

17 Q Okay. Now, the -- specifically, the projections that you
18 have here in Exhibit E, they do not include, as an example, any
19 inventory purchased to supply the piece part business in China?

20 A Not specific to China, no, sir.

21 Q Okay. And you don't have any specific inventory purchase
22 for the manufacturing of engines for the Cessna 172s in China?

23 A No, sir.

24 Q And you don't have any inventory in here for the purchase
25 of -- selling engines for the DA40 or 42 aircraft in China?

1 A Not specific, no, sir.

2 Q Okay. And in terms of inventory to sell 500 engines a year
3 or 150 engines into the Brantly helicopters, those are not in
4 your projections, are they?

5 A Correct.

6 Q Okay. Looking back at Exhibit E, on the balance sheet,
7 this is the second sheet, your cash position basically goes
8 negative in the fourth month, does it not?

9 A Yes, sir.

10 Q So without an immediate input of cash, Superior Air Parts
11 is negative cash -- is that December 31st?

12 A Umm.

13 Q Or sometime in December?

14 A Yes, sir.

15 Q Okay. So if it takes Brantly the \$7 million plus the \$3.4
16 million to get through the first year, you haven't seen any
17 evidence of Brantly being able to fund that, as you sit here
18 today?

19 A No, sir.

20 Q Okay. And you don't want the Court to take anything that
21 you -- any impressions that you have to be a factual basis for
22 the fact that Brantly does in fact have the ability to fund?

23 A I'm not sure I follow the --

24 Q I'll -- it was a bad question.

25 A -- double negatives.

1 Q It was a bad question. You don't want anything that you
2 say here today to suggest to the Court that you have seen any
3 objective evidence to demonstrate that Brantly has the money to
4 fund this plan, do you?

5 A Correct.

6 Q Because you haven't seen it?

7 A Correct.

8 Q Okay. Do you have an employment agreement with Brantly?

9 A No, sir.

10 Q Has one been tendered to you?

11 A No, sir.

12 Q Did you ask for one?

13 A No, sir.

14 Q Okay. Have they just promised you?

15 A Yes, sir.

16 Q Okay. APS tendered you an employment agreement, didn't
17 they?

18 A Yes, sir.

19 Q Okay.

20 MR. GOOD: Pass the witness, Your Honor.

21 THE COURT: Any other cross-examination?

22 MR. WINIKKA: Dan Winikka again for the Thielert.

23 CROSS-EXAMINATION

24 BY MR. WINIKKA:

25 Q Mr. Abercrombie, I just have one or two quick questions for

1 you. You gave some brief testimony about the shipment of parts
2 from TAE to Superior following the acquisition of Superior by
3 TAG. Could you explain exactly again what your understanding
4 is of that deal or arrangement?

5 A The --

6 Q For the shipment of parts?

7 A From TAE to Superior?

8 Q Correct.

9 A Yes. TAE was shipping goods to Superior, and we were not
10 required to pay for those shipments as they were received. We
11 made one -- I believe a million dollars worth of payments in
12 2007 for goods on a one-time -- but that's when we had cash.
13 When we didn't have cash or the ability to pay, we weren't
14 expected to pay for them.

15 Q Okay. And was there anything that you -- to your
16 knowledge, was there anything in writing reflecting this
17 arrangement?

18 A Not that I can recall, no.

19 Q Okay.

20 MR. WINIKKA: Thank you.

21 THE COURT: Anyone else?

22 (No response.)

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MR. ROBERTS:

1 Q Mr. Abercrombie, you intend to stay and serve as the
2 president of Superior Air Parts if this plan is confirmed,
3 correct?

4 A Yes, sir.

5 Q On an employment-at-will basis, correct?

6 A Yes, sir.

7 Q Why are you supporting this plan and making that commitment
8 if you have seen no evidence that they have the money to fund
9 either the acquisition or future costs?

10 A I view this as an entrepreneurial venture attacked by the
11 Chinese investment group that, if successful, could be very
12 good for Superior Air Parts in the future.

13 Q And do you have some faith that they are going to fund
14 that?

15 A I believe they will, yes, sir.

16 Q Now, do you believe it's more likely than not that they
17 will?

18 A Yes, I believe they -- they will fund, more likely than
19 not.

20 Q Now, in answer to one of Mr. Good's questions, you said no
21 input from Brantly on the business plan. But isn't it true
22 that the disclosure statement sets forth the broad parameters
23 of the business plan that guided you in doing Exhibit E?

24 THE COURT: Ask that question again. I'm sorry.

25 MR. ROBERTS: All right.

1 BY MR. ROBERTS:

2 Q Mr. Good -- in response to a question from Mr. Good, I
3 believe you said you had no input from Brantly on developing
4 the business plan.

5 A Yes, sir.

6 Q But when we went through your testimony earlier, we looked
7 at statements in the disclosure statement, which were --
8 provided broad outlines for a business plan. And then we have
9 Exhibit E, which is a detailed business plan.

10 A Correct.

11 Q Isn't it true that Brantly provided the input for the
12 business plan as stated in the disclosure statement?

13 A The parameters were in place, yes, that were taken into
14 consideration.

15 Q And they -- and that's what partially guided you to develop
16 your plan?

17 A Yes. The engine development and the Vantage engine sales
18 in future years.

19 Q And in fact, they are relying on your expertise for
20 developing the detailed plan, correct?

21 A Yes, sir.

22 Q They are taking the entrepreneurial risk on whether they're
23 right that there's going to be the market in China, correct?

24 A Yes, sir.

25 Q And they're putting their money where their mouth is so

1 far?

2 A They've made the deposit. Yes, sir.

3 Q As part of the plan, you approached parties with purchase
4 orders and gave them a choice whether to file a claim for
5 damages or to release that claim and rely on the credit of the
6 Reorganized Superior, correct?

7 A Yes, sir.

8 Q And who were the four biggest by far of those parties?

9 A Zonzi (phonetic), Eck Industries, Molly (phonetic), and
10 Saturn Fasteners.

11 Q And were you able to work -- reach agreement with Saturn,
12 Eck Industries, and Molly?

13 A Yes, sir.

14 Q And can you tell us approximately what the total purchase
15 orders involved in that -- those are? If you want to take them
16 one at a time or collectively.

17 A They had claims -- I believe Molly's was \$900,000, Saturn's
18 was \$454,000, \$457,000, and Eck Industries was, I believe,
19 \$900,000 as well, and Zonzi's was \$1.1 million. That may have
20 been Euro. I can't recall right now.

21 Q I'm not -- I'm sorry. How much was Molly's?

22 A Molly's, I believe, was \$900,000 in total.

23 Q So Eck was about \$900,000, Molly was about \$900,000, and
24 Saturn was about \$454,000?

25 A Well, Saturn had \$900,000 worth of purchase orders, but

1 their claim filed was for, I believe, \$457,000.

2 Q Okay. So those three parties are committing, if I've got
3 this correct, to look to the credit of the Reorganized Superior
4 for \$1.8 million in future orders?

5 A The future orders may not have that same value.

6 Q Well, your purchase orders are going to be \$454,000,
7 \$900,000 and \$900,000, or have they agreed to accept fewer?

8 A They've agreed to accept fewer.

9 Q Okay. Let me get this straight, then. How much is the
10 purchase order for Saturn, or the purchase orders for Saturn?

11 A The purchase orders for Saturn, I believe, are \$400,000.

12 Q Okay. And what about Eck?

13 A Eck Industries, I believe, is two hundred and -- maybe
14 \$220,000.

15 Q And Molly?

16 A And Molly's is approximately \$450,000 to \$475,000.

17 Q Now, your disclosure statement reflects the losses that
18 this company has suffered in the last several years, correct?

19 A Yes, sir.

20 Q And those parties were aware of that, correct?

21 A Yes, sir.

22 Q So now you -- between those parties, then, the number would
23 be over a million in new purchase orders on open credit
24 accepted by three of -- those three large vendors?

25 A Yes, sir.

1 Q Correct? And in doing that, did they ask you for pro forma
2 financial statements?

3 A No, sir.

4 Q Did they insist on any evidence that Brantly was going to
5 fund the acquisition, fund the acquisition or fund future
6 negative cash flows?

7 A No, sir.

8 Q Assuming that Brantly funds the purchase price, the balance
9 of the \$7 million, that money gets paid into the Creditors'
10 Trust, correct?

11 A Yes, sir.

12 Q So the creditors aren't relying on the future of this
13 company to get paid what they're being promised under this
14 plan, correct?

15 A Correct.

16 Q That is administered by the Creditors' Trust, not by
17 Superior, correct?

18 A Correct.

19 Q In the disclosure statement, there is considerable
20 representations made by Brantly that they need Chinese
21 government approval of several layers to fund this transaction.
22 Correct?

23 A Yes, sir.

24 Q And you don't have any -- you can't read Chinese, I
25 presume, correct?

1 A No, sir.

2 Q So Chinese government documents are not something you can
3 authenticate or identify, correct?

4 A Correct.

5 Q And yet, without that evidence, you're still supporting
6 this plan. Why are you not concerned about that issue in
7 supporting this plan?

8 MR. GOOD: Objection, Your Honor. Relevance.

9 THE COURT: Overruled.

10 THE WITNESS: I've met with the principals of the
11 Brantly Group in China. They've come to the States and met
12 here. I've met with the president of the Brantly Helicopter
13 Group in Vernon. I just have a personal comfort that they have
14 a vision and that they have the wherewithal to do it and the
15 desire.

16 BY MR. ROBERTS:

17 Q And you've already testified earlier that you've seen that
18 they did follow through and acquire Brantly and have been
19 funding Brantly since it acquired it, right?

20 A Yes, sir.

21 Q And when you saw the Brantly facility, did it appear that
22 it was -- or do you know whether it was profitable or whether
23 the Brantly Group was having to fund negative cash flow?

24 A It was told to us that they were funding --

25 MR. GOOD: Objection, Your Honor. Hearsay.

1 THE COURT: Sustained.

2 MR. ROBERTS: Okay. Pass the witness.

3 THE COURT: Recross?

4 MR. GOOD: Briefly, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. GOOD:

7 Q Mr. Abercrombie, the last subject that Mr. Roberts was
8 talking to you about, when you went up to the Vernon facility
9 where Brantly Helicopters is located, did you see any
10 financials?

11 A No, sir.

12 Q Did you ask to see any financials?

13 A No, sir.

14 Q Do you know how much of an investment that Brantly made up
15 there?

16 A No, sir.

17 Q Do you know how much money Brantly is funding on a month-
18 to-month basis up there?

19 A No, sir.

20 Q So, basically, what you heard about the Brantly facility in
21 Vernon came to you from Vernon Cantrell?

22 A Yes, sir.

23 Q And you asked for no back-up?

24 A No, sir.

25 MR. GOOD: Pass the witness, Your Honor.

1 THE COURT: Anyone else? Any further questions for
2 this witness?

3 (No response.)

4 THE COURT: Thank you very much. You may step down.

5 (The witness steps down.)

6 THE COURT: Any other evidence in support of
7 confirmation?

8 MR. ROBERTS: Yes, Your Honor. May I have one brief
9 moment to consult with counsel?

10 THE COURT: You may.

11 (Counsel confer.)

12 MR. ROBERTS: Your Honor, the proponents would call
13 Mr. Tom Tong.

14 THE COURT: Mr. Tong, if you'd come forward and be
15 sworn.

16 TOM TONG, DEBTOR'S WITNESS, SWORN

17 MR. ROBERTS: Your Honor, --

18 MR. GOOD: Your Honor, at this point, APS would object
19 to any testimony from Mr. Tong, as he is a lawyer appearing as
20 a material witness in a case on behalf of his client, and under
21 the -- and he's a Texas lawyer, and under Disciplinary Rule
22 3.08 it precludes a lawyer from being a material witness and
23 testifying in a contested matter, and we would object to it.

24 THE COURT: Do you have a copy of that for me?

25 MR. GOOD: Yes, I do, Your Honor.

1 (Pause.)

2 THE COURT: Well, but this says he can't accept or
3 continue employment as an advocate in Court if he's going to be
4 a material fact witness. At least so far, Mr. Tong hasn't
5 advocated anything in this Court.

6 MR. GOOD: Well, Your Honor, he has appeared in this
7 case, been introduced in this case, not just today but in a
8 prior hearing. And this is a contested matter. Where he can
9 continue employment -- where -- and he is remaining in
10 employment, it -- the Disciplinary Rule says that he cannot be
11 a material witness.

12 THE COURT: Well, but that's his problem vis-à-vis the
13 State Bar, isn't it? It does not preclude him --

14 MR. ROBERTS: Your Honor, they sprung this on us, but
15 there's Fifth Circuit law that says exactly what you just said.
16 You can't use this for tactical purposes to eliminate
17 testimony.

18 MR. GOOD: Well, Your Honor, the -- let me stop a
19 minute here. (Pause.) In -- this is my last point, Your
20 Honor. In the deposition I took from Mr. Tong yesterday, there
21 were several instances where I asked for factual information
22 that Mr. Tong and his counsel, properly so, objected to it on
23 the basis of attorney-client privilege. So if I'm going to
24 cross-examine a witness in a case, number one, I'm entitled to
25 find out what he's going to testify to to prepare for the

1 cross-examination. I was prevented from doing that yesterday.
2 And this is kind of the meaning behind this rule, so that you
3 don't have advocates, lawyers, testifying on behalf of their
4 clients, yet protecting the information that they have based
5 upon attorney-client privilege. We'll move to strike.

6 THE COURT: Well, it seems to me that we should
7 address this as the questions are asked of Mr. Tong. And to
8 the extent a question is asked by Mr. Roberts which you were
9 precluded from getting an answer to yesterday, we'll need to
10 revisit that issue.

11 MR. GOOD: All right, Your Honor. I understand.

12 MR. OKIN: Your Honor, if I might. I do want to make
13 sure things are clear for the Court. My concern was exactly
14 the one Mr. Good expressed when we discussed the possibility of
15 Mr. Tong testifying, which is that he is representing his
16 client in this transaction. Not in court as an advocate, but
17 on the transaction.

18 THE COURT: Right.

19 MR. OKIN: For that reason, the deposition was
20 purposely limited up front. We provided Mr. Good with a
21 proffer of Mr. Tong's expected testimony and allowed him to
22 cross-examine Mr. Tong on those topics.

23 It may be messy, but it's a means to an end where you've
24 got clients over in China who don't speak any English, have
25 already made multiple trips to the United States in support of

1 this transaction, and we need a very limited amount of
2 information from Mr. Tong to just establish the process for
3 getting the money over here. We'd just ask the Court's
4 indulgence so we can at least -- so the Debtor can at least
5 establish the basis on which the buyer is going to be able to
6 fund the money.

7 THE COURT: Well, let's start the testimony and we'll
8 see what objections are made.

9 MR. ROBERTS: Your Honor, I would ask leave of Court
10 to allow Mr. Okin to do this direct rather than have me ask
11 questions and have multiple lawyers on one side.

12 THE COURT: That's fine.

13 MR. OKIN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. OKIN:

16 Q Could you please state your name?

17 A Tom Tong.

18 Q And Mr. Tong, could you explain just briefly to the Court
19 your -- where you're from and your educational background?

20 A Born, raised in China. Went to college in China. Came to
21 the States to go to business school first. Had my MBA. Then
22 worked a few years and then went to law school in --

23 Q You went to law school in the United States?

24 A Yeah. Vanderbilt University.

25 Q And --

1 A And --

2 Q What year did you graduate from law school?

3 A 1999.

4 Q And since 1999, you've been a practicing lawyer in the
5 United States?

6 A In Texas.

7 Q Where?

8 A First with Liddell Sapp, Locke Liddell -- Locke Lord now.
9 And since 2005, I started my own boutique firm, and have been
10 since.

11 Q And what's the focus of your practice?

12 A Mostly China-related work.

13 Q And when you say "China-related work," what does that
14 entail?

15 A I advise U.S. companies invest in China, and Chinese
16 companies invest in the U.S.

17 Q And in this case, your client is looking to invest in the
18 U.S.?

19 A Correct.

20 Q And how many -- have you done other transactions like this
21 for clients looking to invest in the U.S.?

22 A Yes.

23 Q Are you familiar with the requirements in China for a
24 Chinese national to bring money into the United States to
25 invest in companies?

1 A Yes.

2 Q Could you generally just tell the Court, is that a simple
3 process or a complicated process?

4 MR. GOOD: Objection, Your Honor. There's no
5 foundation. Mr. Tong has testified that he's a Texas lawyer,
6 not a Chinese lawyer, and the question now involves regulations
7 and governmental processes in China.

8 MR. OKIN: Your Honor, we haven't offered Mr. Tong as
9 an expert witness on Chinese law. Mr. Tong has got experience
10 doing transactions in China and from Chinese nationals in the
11 United States and is familiar with what that entails, and we're
12 offering him as a fact witness explaining how that works.

13 THE COURT: I'll overrule the objection. I believe
14 that the weight that should be accorded Mr. Tong is something
15 that the parties can argue about, and you can cross-examine him
16 with respect to the depth of his knowledge.

17 BY MR. OKIN:

18 Q Mr. Tong, I think the question I'd asked you is, generally,
19 can you tell the Court, is that -- is moving money out of China
20 for a purchase of assets outside of the country an easy process
21 or a complicated process?

22 A It can be burdensome.

23 Q And do you have any general idea of how long it usually
24 takes to get the necessary approvals to move the money?

25 MR. GOOD: Objection, Your Honor. We're not talking

1 about generally. We're talking about specifically in this
2 case, if the witness knows.

3 THE COURT: Well, --

4 MR. OKIN: Your Honor, we're trying to establish,
5 relative to other circumstances, whether this is -- how long
6 this will take. I think it's relevant.

7 THE COURT: Overruled.

8 THE WITNESS: Generally, any company or any individual
9 who wants to start a project overseas, he has to have a
10 approval from the State Development and Reform Commission.
11 That approval will allow the company to start the initial
12 process.

13 Then the company -- the investing company or individual
14 would have to go to their local provincial Bureau of Commerce
15 or Department, Department of Commerce, to get approval so that
16 the investing company can get issued a approval certificate for
17 overseas investment by enterprises.

18 Then the company can take that approval certificate to the
19 relevant or the local foreign currency controller -- the actual
20 name should be the State Administration of Foreign Exchange --
21 so that it can show them the approval certificate and the
22 foreign exchange control can allow the investing company or
23 individual to transfer the necessary foreign currency out of
24 China to wherever the investment might be.

25 BY MR. OKIN:

1 Q And that would be the last step, that you just described
2 there?

3 A As far as money is concerned.

4 Q Okay. Now, in your experience, how long does that process
5 usually take?

6 A Oh, it can be a few months. Each step, each government
7 agency generally has about twenty working days to issue the
8 approval. As long as they issue the approval within twenty
9 working days, nobody gets in trouble.

10 Q Now, out of those steps that you just named, do you know
11 how many hurdles the purchaser in this transaction has already
12 cleared?

13 A It essentially cleared the State Development and Reform
14 Commission. It got the --

15 MR. GOOD: Objection, Your Honor. Calls for
16 speculation. I mean, calls for hearsay. There's no foundation
17 as to the basis of Mr. Tong's knowledge of the steps that have
18 been cleared in this case.

19 THE COURT: I'll sustain the lack of foundation.

20 BY MR. OKIN:

21 Q Mr. Tong, are you -- do you know which steps the buyer in
22 this case has cleared in this process?

23 A All steps except the foreign currency.

24 Q So I'm asking you if you know.

25 A Yes.

1 Q Okay. How do you know?

2 A I've seen copies of the approval and the certificates.

3 Q Have you seen the originals?

4 A I have not.

5 Q You've seen what types of copies?

6 A PDF copies. Scanned e-mail to me from my client.

7 Q And were these -- there were in Chinese?

8 A Yes.

9 Q And how could you tell that these were the actual Chinese
10 documents approving this transaction?

11 A I have seen enough in the past.

12 Q What about the particular documents sent to you indicates
13 that they were the actual documents?

14 A They have the letterhead and have the seal, official seal,
15 at the end of the document.

16 Q And based on that, is that enough for you to draw a
17 conclusion as to whether or not your client has fulfilled all
18 of the steps necessary to move the money out of China?

19 MR. GOOD: Objection, Your Honor. If --

20 THE WITNESS: Yes. It's my --

21 MR. GOOD: If that's the basis of Mr. Tong's
22 testimony, based upon these documents that he has, then the
23 best evidence of that testimony -- of that -- of those hurdles
24 are the documents themselves, not Mr. Tong's testimony of them.
25 And we object to his testimony absent the documents.

1 THE COURT: Response?

2 MR. OKIN: Your Honor, we do have the documents,
3 they're the same photocopies that Mr. Tong has viewed, and
4 we're happy to introduce them. They're in the Debtor's exhibit
5 book.

6 In this case, however, the point here is not really to
7 prove the truth of the matter to a definitive point that the
8 buyer has absolute authority to send the money today. At the
9 end of the day, the Debtor has got protection. It's got a
10 deposit. There's thirty days for the money to come in. It's
11 essentially -- I think it goes to the weight generally that the
12 Court just applies to the overall likelihood that this plan is
13 going to be fulfilled.

14 THE COURT: Where --

15 MR. OKIN: And I think you can -- you can weigh it
16 accordingly.

17 THE COURT: Where are the documents?

18 MR. OKIN: Your Honor, they're exhibits -- the part of
19 the proffer that was provided to APS, Exhibit G. And if Your
20 Honor would prefer, I'm happy to authenticate -- try to have
21 Mr. Tong identify the documents and offer them. I anticipated
22 that that would draw an objection from Mr. Good, and figured
23 that --

24 THE COURT: Well, it probably will, but let's try.

25 (Laughter.)

1 MR. OKIN: That's fine, Your Honor. I'm trying to
2 just generally inform the Court without having to worry about
3 that, but we can do it that way.

4 BY MR. OKIN:

5 Q Mr. Tong, will you look at Exhibit G, please? Flip through
6 that and make sure you're familiar with all of it. (Pause.)
7 Now, mixed in throughout Exhibit G are English pages and then
8 Chinese pages, Chinese-language pages. Can you explain to the
9 Court what the -- what these -- why there's English and why
10 there's then Chinese?

11 A The Chinese were sent to me by my client and the
12 translations -- the English pages are translations of each of
13 the documents.

14 Q And who translated these?

15 A I did.

16 Q You actually read the Chinese and then typed this
17 translation?

18 A Yes.

19 Q How long ago was this done by you?

20 A Last week.

21 Q And these are accurate translations of the Chinese
22 documents?

23 A Yes.

24 Q And these are in Mandarin, Chinese?

25 A Correct.

1 Q Now, so each translation begins a new document?

2 A The way -- it's the same -- yes.

3 Q So how many individual Chinese documents are there in this
4 Exhibit G?

5 A Three.

6 Q Okay. And let's take them in order, one at a time, just so
7 we can identify them and how we know what they are. So
8 starting with the first one, going past the first two English
9 translation pages to the third page of Exhibit G, what does
10 this document on its face appear to be?

11 A The third page? The first Chinese page?

12 Q Yes. The third page of the exhibit. Whose letterhead is
13 that at the top?

14 A It's the Development and Reform Commission of Zun Don
15 (phonetic) Province.

16 Q Okay. And it's dated what?

17 A Date, July 1st, 2009. And I just want to point out the
18 translation didn't -- was not assembled --

19 Q Yeah. This is totally --

20 A Exactly.

21 Q -- out of order, isn't it?

22 A Yes.

23 Q Okay. I was noticing that as you were.

24 THE COURT: So what --

25 MR. OKIN: Yes. Your Honor, I don't know if we want

1 to reassemble this exhibit or --

2 THE WITNESS: They're all there. Just not in the
3 right order.

4 MR. OKIN: The -- let's --

5 THE WITNESS: The last two pages of G goes with what
6 I'm looking at right now.

7 THE COURT: The last two pages of G go with the first
8 page, the first and second page?

9 MR. OKIN: Yes.

10 THE WITNESS: Of Chinese. That's right.

11 MR. OKIN: Your Honor, I think maybe what would be
12 best is why don't we disassemble one exhibit? We haven't
13 taken a break. Would Your Honor be interested in taking a
14 break and we'll reassemble an exhibit, at least one for the
15 witness and one for the Court, so that we can do this in a way
16 that everybody can understand what we're doing?

17 THE COURT: Sure. Be sure, obviously, that you --

18 MR. OKIN: We'll make sure counsel knows.

19 THE COURT: -- Mr. Good knows which order you're
20 reassembling. But I'll loan you back my exhibit and we'll take
21 a ten-minute recess.

22 MR. OKIN: Thank you, Your Honor.

23 THE COURT: Thank you.

24 THE CLERK: All rise.

25 (A recess ensued from 3:10 p.m. to 3:25 p.m.)

1 THE COURT: Be seated, please. All right.

2 MR. OKIN: Your Honor, I think we have a solution. I
3 hope --

4 THE COURT: All right.

5 MR. OKIN: I hope it works. We --

6 THE COURT: Now, I only gave you one back, --

7 MR. OKIN: Yes.

8 THE COURT: -- and I've now got two. So --

9 MR. OKIN: We checked with your clerk and I understand
10 you keep one for chambers. And I want to explain what the two
11 are, because we did two different -- we reordered three sets of
12 the exhibits: the witness', mine and yours.

13 THE COURT: All right.

14 MR. OKIN: Everybody else's, we didn't reorder it.
15 But before we reordered those three, we numbered the pages in
16 the original order 1 through 11.

17 THE COURT: All right.

18 MR. OKIN: And then reordered them. So anybody who's
19 got an un-reordered set of exhibits can follow along by page
20 number.

21 THE COURT: Okay.

22 MR. OKIN: Your Honor, you should be able to go
23 through in order as we go.

24 THE COURT: All right.

25 MR. OKIN: But that way, the record will be clear and

1 the other set of exhibits otherwise not reordered for you, when
2 you have it back in chambers, you'll have -- you'll know what
3 pages we were referring to.

4 THE COURT: All right.

5 BY MR. OKIN:

6 Q So, hoping that works: Mr. Tong, now, looking at Exhibit
7 G, the first translated page of the first document in the
8 logical order of approval, on what page number is that?

9 A Page 9.

10 Q Okay. And that's a translation of what document? What
11 page number is at the bottom of the Chinese documents?

12 A 3 and 4.

13 Q Okay. So Page 9 is a translation of 3 and 4?

14 A Correct.

15 Q And --

16 THE COURT: I'm sorry. I'm now more confused than I
17 was before.

18 MR. OKIN: I'm sorry, Your Honor.

19 THE COURT: The book that I have that has -- is
20 numbered 1 through 9 at the bottom, or 1 through --

21 MR. OKIN: 11.

22 THE COURT: -- 11 at the bottom.

23 MR. OKIN: And they're in order 1 through 11?

24 THE COURT: Yes.

25 MR. OKIN: Your Honor, if you take the other book,

1 they're already reordered.

2 THE COURT: All right.

3 MR. OKIN: The first page should be 9, if we didn't do
4 it wrong.

5 THE COURT: Got it.

6 MR. OKIN: Okay.

7 THE COURT: Thank you.

8 MR. OKIN: Sometimes they seem like good ideas to me.
9 They don't always turn out to be. I'm hoping this works.

10 BY MR. OKIN:

11 Q So, again, Mr. Tong, so Page 3 and 4 is the Chinese
12 document. And what is the letterhead of that document?

13 A That's the letterhead of the Development and the Reform
14 Commission of Zun Don Province.

15 Q Okay. And what is the Development and Reform Commission of
16 Zun Don Province?

17 A That's the government agency that I mentioned that would
18 approve the initial stage of the -- any foreign investment
19 project.

20 Q Okay. And what's the title of this document?

21 A Response to the Report of the Acquisition of Superior Air
22 Parts, Inc. of the United States of America by Xi'an Free Sky
23 Aviation Science & Technology Co., Ltd.

24 Q And the date on the document?

25 A July 1, 2009.

1 Q Okay. And you mentioned earlier, when we were talking
2 about being able to tell they were actual Chinese official
3 documents, the seal. Where does the seal appear on this
4 document?

5 A That's at the very end of the document.

6 Q That's the circle at the bottom, at the -- in the middle of
7 the last page, of Page 4?

8 A With the red star in the middle.

9 Q And --

10 MR. GOOD: Objection, Your Honor. To the extent the
11 witness is reading the document into the record, it's hearsay,
12 and we object to it. And moreover, these documents that appear
13 -- I want to make sure I get my objection in sufficiently early
14 -- these documents are not properly authenticated under the
15 Federal Rules, Rule 902.3, and they're inadmissible.

16 MR. OKIN: Your Honor?

17 THE COURT: Response?

18 MR. OKIN: I am attempting as best I can to not ask
19 Mr. Tong about the contents of the documents, merely to
20 identify them and attempt to authenticate them. I do believe,
21 if we want to address the admissibility of these documents now,
22 that Your Honor can admit into evidence documents that you
23 believe assist you as the trier of fact in determining the
24 issues in dispute.

25 THE COURT: Give me a cite to the Federal Rule of

1 Evidence.

2 MR. OKIN: That'd be Rule --

3 THE COURT: Because a foreign public document does
4 have specific requirements under 902.3.

5 MR. OKIN: Yes, Your Honor.

6 THE COURT: Which is what I take it these are, foreign
7 public documents.

8 MR. OKIN: They are, Your Honor. But in Rule -- I
9 apologize, Your Honor. I did not know I would be doing this
10 right now, so I didn't --

11 THE COURT: Understood.

12 MR. OKIN: -- come prepared to argue the legality of
13 it.

14 I'm not able to put my finger on the exact rule, the cite.
15 But I do believe, Your Honor, that instances, especially in a
16 bench trial when there is no jury, that the trier of fact can
17 weigh the credibility of a document even if it is not
18 authenticated specifically under the technical requirement of
19 the particular Rule of Evidence.

20 THE COURT: But how do I have any idea what these
21 documents are? I don't speak Mandarin.

22 MR. OKIN: Your Honor, again, it's no different than
23 weighing the credibility of the fact testimony of any witness.
24 You're essentially taking the testimony of Mr. -- Your Honor,
25 that's why, in fact, I didn't go with the documents first; I

1 went with Mr. Tong's testimony. We're basically asking --

2 THE COURT: But we've got a best evidence problem with
3 this testimony. The best evidence -- I mean, his oral
4 testimony is simply going to tell me about documents that he's
5 read and is relying upon. That's a classic best evidence
6 problem.

7 MR. OKIN: Yes, Your Honor.

8 THE COURT: And now we get to the documents
9 themselves, and we've got an authentication problem because --
10 so, unless you can cite me to a case law decision or a rule of
11 evidence that supports what you're hoping that I can do, --

12 MR. OKIN: Your Honor, going back to the best evidence
13 rule -- and again, it's why we didn't go with the documents --
14 we're not trying -- we didn't start out trying to prove to the
15 Court that there are in existence Chinese government documents
16 that state that the purchaser can transfer money into the
17 United States. We started out trying to prove to the Court
18 that the purchaser has obtained most, with the exception of
19 one, regulatory approvals necessary in order to transfer the
20 money, not which specific approval -- the contents of a
21 specific approval or a specific document. Merely that Mr.
22 Tong, as both the attorney for the buyer and as their U.S.
23 agent attempting to facilitate this transaction, is familiar
24 with the stages of the transaction and the communication with
25 his client and is aware, as a representative of the client, of

1 where they are in this process, and can testify to that fact.

2 THE COURT: Well, --

3 MR. OKIN: I don't think you need to find that the
4 Department -- that the Bureau of Commerce in Zun Don Province
5 has specifically issued an approval.

6 THE COURT: Well, then try and prove what you are
7 trying to prove some other way. But at least I do think there
8 is a problem with the admission of these documents in the face
9 of APS's objection to them. So I'll sustain the objection.

10 I mean, is there some reason why we didn't get certified
11 copies?

12 MR. OKIN: Your Honor, because we didn't -- we didn't
13 know we even would have to prove this issue until the end of
14 last week. Quite frankly, a buyer usually putting down a ten
15 percent deposit, nonrefundable, we figured that ought to be
16 enough proof, when there's only thirty days to close, that we
17 can fund the money. And it was only in response to APS's
18 continued objections that we even asked for it.

19 THE COURT: Fair enough.

20 BY MR. OKIN:

21 Q We'll try this, Mr. Tong. Do you -- has the buyer sought
22 the necessary regulatory approvals that you described to the
23 Court earlier?

24 A Yes.

25 MR. GOOD: Objection. No foundation. He hasn't

1 demonstrated that he knows what's going on in China.

2 THE COURT: Well, --

3 MR. OKIN: Your Honor, he's an agent for the buyer.

4 THE COURT: Well, lay the foundation. How do you know
5 what's been done in China?

6 BY MR. OKIN:

7 Q Mr. Tong, what's been your -- what has your involvement
8 been in this transaction?

9 A I've been talking to my client on a daily basis on the
10 telephone or through e-mail.

11 Q And you visited China as well?

12 A Yes.

13 Q The clients visited you?

14 A Every time they came to States, I meet with them.

15 Q And you're advising them on the legal issues involved in
16 this purchase?

17 A Yes.

18 Q Are you advising them on things beyond the legal issues?
19 Advising them on how to conduct the business deal itself in the
20 U.S.?

21 A No.

22 Q You're not advising them as to where the money needs to be
23 wired, when it needs to be wired, how much they need to pay?

24 A That much, I only convey the message, yes.

25 Q You haven't consulted with them on strategy, on bidding,

1 things of that nature?

2 A I have.

3 Q And how the payment process should work?

4 A Yes.

5 Q And in that -- based on all of that, has that given you
6 reason to know what your client is doing with regard to having
7 the money transferred from China to the United States?

8 A Yes.

9 MR. GOOD: Your Honor, that calls for hearsay.

10 MR. OKIN: Your Honor, --

11 THE COURT: It does appear that how he knows that is
12 from what his clients have told him they've done.

13 MR. OKIN: Your Honor, but he's not a third party
14 witness testifying to another's acts. He's essentially an
15 agent for the buyer in the United States.

16 THE COURT: I'm going to sustain --

17 MR. OKIN: He'd be no different than a corporate
18 representative.

19 THE COURT: I'm going to sustain the hearsay
20 objection. At least so far, it appears that his knowledge is
21 not based upon direct involvement in China, but rather what his
22 client has told him about their efforts in China or what he's
23 read from looking at documents the client sent to him.

24 BY MR. OKIN:

25 Q Mr. Tong, you're aware that the Debtor's plan requires the

1 buyer to close within thirty days of the entry of confirmation
2 order?

3 A Yes.

4 Q And the buyer is aware of that?

5 A Yes.

6 Q And has the buyer expressed any concern over being able to
7 meet that deadline?

8 A No.

9 MR. GOOD: Objection, Your Honor. Calls for hearsay.

10 THE COURT: Sustained.

11 BY MR. OKIN:

12 Q Mr. Tong, were you a party to the discussions with the
13 Debtor as to the terms of when the effective date -- when the
14 money would be due, on the purchase would be due?

15 A Yes.

16 Q And therefore do you know why there's a 'thirty days after
17 the effect of the confirmation order being entered' requirement
18 in the plan?

19 A I do know.

20 Q Why is it in there?

21 A Because of the government approval process.

22 Q Is that something the buyer wanted? Is that something the
23 buyer asked for?

24 A Yes.

25 Q And they asked for that -- do you know why they asked for

1 that?

2 A Because they have been talking to the government and they
3 had found out the government approval needs time.

4 Q And that's how much time they'd thought they needed?

5 A Right.

6 Q And they made the \$700,000 deposit on the assumption or on
7 the basis of that belief that the thirty days would be
8 sufficient?

9 A Right.

10 Q In your role as we've just discussed, do you know of any
11 reason why thirty days will not be sufficient?

12 A I don't.

13 Q Do you expect that they'll be able to fund?

14 A Yes.

15 MR. OKIN: I'll pass the witness, Your Honor.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. GOOD:

19 Q Mr. Tong, good afternoon. My name is Kevin Good.

20 A Good afternoon.

21 Q I represent Aviation Parts Supply. You know that?

22 A Yes.

23 Q Okay. Let me ask you just a few questions here. (Pause.)
24 Mr. Tong, in terms of whatever approval processes are going on
25 in China, you were not involved in any of that, were you?

1 A No, I was not.

2 Q Okay. Have you ever seen a financial statement from any of
3 the members of the Brantly Group?

4 A No.

5 Q Have you ever seen a bank account with money in it, bank
6 statement, from any of your clients, the Brantly Group?

7 A No.

8 Q And is it my understanding that if there is no confirmation
9 order today entered by the Court, that the money will not be
10 released from China?

11 A That is correct. The release depends on the confirmation
12 today.

13 Q And that's dictated by Chinese law?

14 A Yes.

15 THE COURT: I don't understand that. What do you
16 mean, that's dictated by Chinese law?

17 THE WITNESS: Well, I'm trying to make it simple.
18 That's why I hesitated. It's not really law. The Foreign
19 Currency Control Agencies wants to just have your final
20 confirmation to confirm that -- that this is -- there is a
21 transaction going on. If they're rejected, they shouldn't send
22 the money out.

23 BY MR. GOOD:

24 Q And Mr. Tong, I asked you the other day whether or not you
25 could guarantee to this Court that \$10 million or \$7 million or

1 any millions of dollars were going to be transmitted and
2 released from China based upon the actions of the Chinese
3 government, and your answer was what?

4 A I said nobody can guarantee anything.

5 Q There are no guarantees, right? Isn't that true?

6 A Correct.

7 Q If you're going to show money, you've got to have a bank
8 commitment letter or cash in the bank. Isn't that true?
9 That's a guarantee?

10 A I do not understand. Say it again.

11 Q All right. I'll pass that.

12 Mr. Tong, you talked some generally about your experience
13 in transactions to and from China. Have you ever been involved
14 in a transaction where \$10 million was being transmitted to the
15 United States for acquisition of a company in bankruptcy?

16 A No, not in bankruptcy. At all.

17 Q So, you've no experience in this type of a transaction
18 where money was coming out of China to acquire a company coming
19 out of bankruptcy?

20 A No. Not, again, in a bankruptcy context.

21 Q Understood. Now, have you seen any board of directors'
22 minutes, --

23 A No.

24 Q -- resolutions -- just a minute. Let me finish. Board of
25 directors' resolutions, minutes, or unanimous consents from

1 your client that commit your client to the acquisition of
2 Superior Air Parts?

3 A No.

4 Q Have you asked for them?

5 A No.

6 Q Have you seen any corporate resolution or unanimous consent
7 of the board of directors of your client to commit \$10 million
8 for the acquisition of Superior Air Parts?

9 A No.

10 Q \$7 million for the acquisition of Superior Air Parts?

11 A No, I have not seen.

12 MR. GOOD: Your Honor, I'll pass the witness.

13 MR. OKIN: Brief redirect, Your Honor?

14 THE COURT: Anyone else have cross-examination?

15 (No response.)

16 THE COURT: Yes, please.

17 REDIRECT EXAMINATION

18 BY MR. OKIN:

19 Q Mr. Tong, counsel for APS keeps mentioning \$10 million.
20 Where does that number come from?

21 A That's actually written in the -- two of the -- one of the
22 approvals and the approval certificates.

23 MR. GOOD: Objection. To the extent that he's reading
24 from a document that's not in evidence, it's hearsay.

25 MR. OKIN: Your Honor, Mr. -- APS has asked repeatedly

1 about whether we -- Mr. Tong knows if there's \$10 million out
2 there.

3 THE COURT: I assume it's the \$7 million plus the cash
4 that's needed for ongoing operations.

5 MR. OKIN: It's the amount that APS has -- that
6 Brantly has asked for approval to transfer.

7 THE COURT: Mr. Abercrombie?

8 MR. OKIN: Did Your Honor -- I don't know if you ruled
9 on that. Can he answer it, or --

10 THE COURT: Well, how does he know? Lay the
11 foundation for how he knows how much money --

12 BY MR. OKIN:

13 Q Are you familiar with how much --

14 MR. OKIN: Your Honor, we'll move on. I think this is
15 just getting extraneous.

16 BY MR. OKIN:

17 Q You mentioned -- you were talking about the currency
18 control issue. What's the purpose of needing -- what's the
19 government purpose, if you know, behind requiring this final
20 approval?

21 MR. GOOD: Objection, Your Honor. Foundation.

22 MR. OKIN: I think we've covered that, Your Honor.
23 He's familiar with transactions in China. He's -- he grew up
24 there.

25 THE COURT: Overruled.

1 THE WITNESS: The government just want to make sure
2 that hard-earned foreign currency goes to the legitimate
3 purpose.

4 BY MR. OKIN:

5 Q So if the Court were not to approve this purchase, your
6 client wouldn't then have the ability to transfer \$10 million
7 into the United States for some other purpose?

8 A Correct.

9 Q Is it your understanding that the final approval that's
10 necessary requires any discretion by the agency that's supposed
11 to issue it?

12 A No. That's just for verification.

13 Q So it's just a certification that they issue based on the
14 order?

15 A Yes.

16 Q Now, lastly, --

17 MR. OKIN: Actually, I think that's all.

18 Your Honor, one other thing, though. I'm not going to go
19 back to the exhibits, but I did find the rule, and I just
20 wanted to point it out to you.

21 THE COURT: Please.

22 MR. OKIN: Rule 901. You know, the self-
23 authentication rule of 902 is supposed to make it easier on us
24 for presenting documents that are self-authenticating, --

25 THE COURT: Right.

1 MR. OKIN: -- and the rules for how you self-
2 authenticate it. But Rule 901(a) is really the general rule
3 for authentication of documents, and it doesn't only apply to a
4 letter that a party may have sent to another. It can apply to
5 a government document. You usually wouldn't use it because you
6 would have self-authenticating documents. But what I was
7 trying to state for Your Honor and my memory was failing me is
8 that, if it would -- if it's generally -- if you're generally
9 satisfied that it's what it -- the proponent purports it to be,
10 that you can admit it, especially in light of a determination
11 by you that it does assist the trier of fact in reaching
12 conclusions on disputed issues.

13 THE COURT: Well, are you going back to this, or not?

14 MR. OKIN: Mr. Roberts wants me to ask to introduce
15 them, so yes, Your Honor, we'll move to introduce the three
16 Chinese-language documents.

17 (Pause.)

18 THE COURT: Mr. Good?

19 MR. GOOD: Yes, Your Honor. We maintain our
20 objection. It's hearsay. They're unauthenticated. They're
21 inadmissible. The general rule is one for general guidance.
22 In this particular case, we have a specific rule on self-
23 authentication.

24 And you have to understand also, Your Honor, where Mr. Tong
25 testified that he got these documents. He didn't get them from

1 the government; he got them from his client. He doesn't have
2 the originals. They came to him as an attachment, a PDF
3 attachment, to an e-mail. There is a requirement for an
4 attestation, but there's also the second requirement for a
5 final certification.

6 THE COURT: Well, but look at 901(b)(7).

7 MR. GOOD: Yes, Your Honor.

8 THE COURT: Because it deals with public records or
9 reports and provides a basis for them to be excepted from the
10 authentication requirement. So I agree with you that 902.3
11 would suggest that the proponents of these documents have a
12 problem, but let's focus for a moment on 901(b)(7).

13 MR. GOOD: All right, Your Honor. Let's talk about
14 that. Evidence -- this is 901(b)(7). "Evidence that a writing
15 authorized by law." There's no evidence in this record that
16 these records were authorized by law. They may look like
17 they're legal. They may look like they have a seal. But
18 there's no -- there's no testimony, and Mr. Tong is not a
19 Chinese lawyer, that these documents are writings authorized by
20 law, nor that they are to be recorded or filed anywhere. The
21 only testimony that Mr. Tong can provide is that he got them
22 from his client.

23 THE COURT: Right. All right. Well, keep reading,
24 though.

25 MR. GOOD: Sure.

1 THE COURT: "Or is a purported public record, report,
2 statement or data compilation in any form as from the public
3 office where items of this nature are kept."

4 MR. GOOD: And there's no testimony as to where the
5 items are kept, items of this nature are kept. What we're
6 talking about here are PDF copies, the originals of which we
7 don't know, and quite frankly, we don't know whether they
8 actually came from any office. They could have been
9 fabricated. I'm not suggesting that, Your Honor, but that's
10 the reason why you have to have some type of a foundation for
11 these documents.

12 And where -- I would also suggest, Your Honor, where there
13 is -- where there is a specific provision dealing with specific
14 foreign public documents, there's reasons, policy reasons, for
15 that. The public records or reports in 901 -- and I haven't
16 looked at the specific case law under there, but my suspicion
17 is that we're talking about U.S. documents, U.S. filings,
18 things of that nature. When you go offshore, I mean, everybody
19 has their own special way of doing things, and the
20 clearinghouse is asking for that final certification or to take
21 it to the U.S. counsel, consul, to have it authorized. And for
22 that reason, Your Honor, these aren't authenticated.

23 And as to the parties in this case, they constitute hearsay
24 and we object to them.

25 MR. OKIN: Your Honor, a few things. As I already

1 said, 902 and 901(b), I mean, 901(b) is very explicit about it.
2 They're not intended to limit the Court's ability to find
3 documents authentic and admit them. They're intended to
4 illustrate examples of what might help make something
5 authentic. And 902 is essentially a rule intended to help the
6 process so you wouldn't have to hire a legal expert to come in
7 and testify as to what the documents are. But the Court admits
8 all the time PDFs or printed letters from PDFs, correspondence,
9 and a witness is asked, "Do you recognize this letter?" You
10 know, "How do you recognize it?"

11 THE COURT: But generally it's in English where I can
12 read it and understand what it says.

13 MR. OKIN: That's true, Your Honor. And I'd submit
14 there that you have to determine that you're able to at least
15 afford some weight to these that is worth even admitting them.
16 I don't think you have to give them the full faith and credit,
17 or you can. I think you can weigh into the fact the witness's
18 testimony, the fact that Mr. Tong is a Texas lawyer and has an
19 additional duty to the Bar to be truthful, and if he -- I mean,
20 he -- I think -- Mr. Good can cross-examine Mr. Tong on how he
21 knows what he knows and the veracity of what he's saying. If
22 he's questioning whether Mr. Tong is correctly identifying
23 these documents or correctly translating them, that's one
24 thing. If he's just -- doesn't believe that Mr. Tong's client
25 actually got these from the government and created them out of

1 whole cloth, I guess that's another. And there are different
2 findings that you can make in terms of whether you choose to
3 admit this or not.

4 And in the end, I think you just need -- I think it's an
5 issue of whether you think it could be helpful to your
6 determination to have those available to you.

7 THE COURT: I don't think that's the issue. Of course
8 it would be helpful. But this is an issue of your burden of
9 proof or the proponents' burden of proof to establish
10 feasibility, and I have no ability to know what these documents
11 are.

12 And I don't mean that to impugn your integrity, Mr. Tong.
13 But, frankly, you didn't get them from the governmental
14 offices. You got them from your client. And you don't know
15 that they are what they are really either, other than your
16 client tells you that they are.

17 So I don't believe that 901 -- I don't believe that I am in
18 a position to conclude that these are authentic documents such
19 that I can remove the requirements of the Federal Rules of
20 Evidence as set forth in Rule 902.3 for them to bear the
21 appropriate certifications that are required for them to be
22 self-authenticating.

23 So I will decline the invitation to allow them to be
24 admitted in accordance with Rule 901(b).

25 MR. OKIN: Okay. We'll pass the witness, Your Honor.

1 THE COURT: Very well.

2 MR. GOOD: No further questions, Your Honor.

3 THE COURT: Very well. Thank you, Mr. Tong. You may
4 step down.

5 (The witness steps down.)

6 MR. ROBERTS: Your Honor, we do not have additional
7 witnesses. There have been exhibits introduced into evidence
8 that we will comment on in closing to show where we've met our
9 burden of proofs of the documentation. We don't think we need
10 testimony for that.

11 THE COURT: All right. So the Debtor rests?

12 MR. ROBERTS: Well, not quite, because we've got two
13 issues that are interrelated, and that are the votes of TAE and
14 TAG.

15 THE COURT: All right.

16 MR. ROBERTS: So I think it would be an appropriate
17 time to, one, on the motion of the Creditors' Committee, to
18 compel TAE to perform -- to comply with the Rule 11 agreement
19 and change its vote to an affirmative vote. We've heard TAE
20 say, "Well, that relief, we agree to." But we haven't gotten
21 entry of an order approving that motion and allowing that vote.
22 So I think it's important that that be taken up.

23 And then we have put on evidence that goes to TAG's motion
24 as to who they are, what they are owed, and why they should be
25 able to vote, in spite of the fact that APS has filed

1 objections to them.

2 So, in order to close on the plan, I would prefer to show
3 that we have the votes of TAG and TAE, and we have motions
4 before this Court to address those.

5 THE COURT: Well, then let's take those motions up.

6 MR. ROBERTS: Okay.

7 THE COURT: Mr. Salomon?

8 MR. SALOMON: Thank you, Your Honor.

9 Your Honor, I think what's first on today is the motion to
10 expedite, the motion that was filed the day before yesterday, I
11 believe. And then, if Your Honor grants that motion to
12 expedite, we'll hear the motion on the merits.

13 THE COURT: Right.

14 MR. SALOMON: It's obviously in connection with the
15 confirmation that we are making this motion, and for that
16 reason I think -- for that reason alone, I think it should be
17 expedited. The -- APS has filed a response to our motion, so
18 they are prepared to address it on the merits, apparently. And
19 I would like, if Your Honor please, I would like to proceed
20 with the main motion.

21 THE COURT: Any objection to proceeding to the merits
22 of the motion for temporary allowance?

23 MR. GOOD: No, Your Honor.

24 THE COURT: Very well. Then the motion to expedite
25 will be granted, and we'll proceed to the merits of the request

1 for a temporary allowance of the claim for voting purposes.

2 MR. SALOMON: Thank you, Judge.

3 Judge, this motion is occasioned because, again, APS seems
4 to seek to disenfranchise creditors. TAG is one of the largest
5 creditors in this case. It is the shareholder. It paid, as
6 Mr. Abercrombie testified, \$10 million in hard cash in order to
7 purchase claims. It's those claims that form the basis of
8 TAG's proof of claim that's been filed in the Court.

9 Your Honor previously has ruled that TAG's claim is not a
10 secured claim. We have accepted that. No appeal was taken of
11 Your Honor's order. TAG has compromised its claim in order to
12 make -- after some back-and-forth with representatives of the
13 Creditors' Committee -- in order to confirm a Chapter 11 plan.
14 The Committee has supported this Chapter 11 plan. So has TAG.
15 TAG cast a ballot, timely cast a ballot in favor of the plan.
16 TAG wants the Court to understand -- even though it
17 understands that it is an insider and that confirmation
18 standards require that Your Honor have an impaired accepting
19 class of a non-insider. We do understand that. But we want
20 the Court to understand, too, that TAG wants its claim to be
21 considered -- rather, its vote to be considered. That it
22 wholeheartedly supports this plan, that it believes that it's
23 in the best interest of TAG and the creditors and the estate
24 for the plan to be confirmed. And we are concerned -- I'm
25 sure Mr. Roberts can speak to this -- about the consequence of

1 a failure of this confirmation, of this confirmation
2 proceeding.

3 THE COURT: But legally, it doesn't have any effect
4 whether you vote or not, does it?

5 MR. SALOMON: I don't think, ultimately, yes, but I
6 think it's important for the Court to understand that, as one
7 of the largest creditors in the case that is separately
8 classified under the plan, that TAG does support the plan and
9 it wants the Court to know that.

10 Thank you.

11 THE COURT: Mr. Leonard?

12 MR. LEONARD: Just briefly, Your Honor. I think you
13 pointed out, we filed our response. The motion was a little
14 bit vague because they said they wanted their equity interest
15 provision allowed for voting purposes, and, of course, under
16 the plan, their equity is cancelled and they're deemed to
17 reject it, so they're not entitled to vote.

18 THE COURT: Right.

19 MR. LEONARD: Secondly, with respect to their Class 9
20 claim, as you pointed out and as Mr. Salomon also mentioned,
21 they are an insider, and under 1126(g) -- I'm sorry, under the
22 -- yes, under the 1126, the plan provides that Class 10 has
23 been deemed to reject the plan. I'm sorry. As to
24 1129(a)(10), an impaired class has to vote to accept the plan
25 without including consideration of votes of an acceptance by

1 an insider.

2 THE COURT: Right. But we have that here. So they
3 have triggered their ability to cram the plan down if we
4 needed to go to cram-down, but, frankly, we don't need to go
5 to cram down.

6 MR. LEONARD: And so the point of my response to
7 their motion was they're not entitled -- I mean, their vote is
8 of no consequence because --

9 THE COURT: But then why do you care if they -- I
10 mean, they didn't object to confirmation --

11 MR. LEONARD: Well, --

12 THE COURT: -- and they've now verbally told me they
13 support confirmation. Why do you care if they vote yes?

14 MR. LEONARD: If that's the whole reason of the
15 motion, is that they want to let the Court know they support
16 the confirmation plan, then that's fine. I don't have any
17 opposition about it. I do oppose that the motion be granted.
18 But if all they're willing to do is say, "We support the
19 plan," that's fine.

20 THE COURT: Okay. But why do you care if the motion
21 is granted if it has no legal consequence? I mean, this --

22 MR. LEONARD: I don't.

23 THE COURT: To me, this --

24 MR. LEONARD: If it has no legal consequence, I
25 don't. I don't.

1 THE COURT: We both agree that Class 7 overwhelmingly
2 voted to accept the plan. That's the impaired accepting
3 class. No class junior is taking anything, so we don't have a
4 cram-down problem because equity is being cancelled. So, to
5 me, this is a whoop-di-doo. It shouldn't matter to either of
6 you whether this claim is temporarily allowed or not
7 temporarily allowed.

8 MR. LEONARD: I --

9 THE COURT: Argue with me. I'm --

10 MR. LEONARD: No, I don't want to argue.

11 THE COURT: I'm puzzled.

12 MR. LEONARD: Based on what his -- what he -- when
13 Mr. Salomon said to the Court the main reason they want to do
14 this is to say that they support the plan, that's fine.

15 THE COURT: Okay. So you're all right with their
16 claim being temporarily allowed, notwithstanding your
17 adversary proceeding, for purposes of voting on the plan? Is
18 --

19 MR. LEONARD: Well, you know, I'm going to just stand
20 on the pleading that we oppose it because, number one, --

21 THE COURT: But you're going to have to tell me why,
22 then, because I don't get this. Why are you opposing the
23 temporary allowance of a claim for voting purposes?

24 MR. LEONARD: Well, --

25 THE COURT: It has no effect on your lawsuit. It

1 does nothing vis-à-vis the allowability of their claim in the
2 case.

3 MR. LEONARD: Okay, Your Honor. There are some
4 timeliness issues as well. They allege in their motion that
5 they didn't realize that they wouldn't be allowed to vote
6 until after the ballot summary was filed. They knew or should
7 have known at that point in time they could have filed this
8 earlier.

9 THE COURT: So you're objecting because they didn't
10 timely move for temporary allowance?

11 MR. LEONARD: That's one of the grounds of the
12 objection. Yes, Your Honor.

13 The other one is that it is of no consequence under
14 1129(a)(D) -- (a)(10).

15 And then with respect to their interests that they want
16 allowed, that's contrary to 1126(g) and the terms of the plan,
17 that they're not entitled to have their interests allowed.

18 THE COURT: All right.

19 MR. LEONARD: Thank you, Your Honor.

20 THE COURT: Mr. Roberts?

21 MR. ROBERTS: Your Honor, we agree it may not matter,
22 but we like belts and suspenders. And 1129(a)(7) says, with
23 respect to each impaired class of claims, it has either
24 accepted the plan or will receive or retain under the plan
25 what it would get in liquidation. They have accepted less

1 than their pro rata share with unsecured creditors as part of
2 a compromise. I don't want to run into that issue when
3 they're standing here telling you they support that compromise
4 and there is no reason not to allow the vote for that purpose.

5 THE COURT: Well, except they didn't file their
6 request timely. That's a reason, --

7 MR. ROBERTS: You know, it --

8 THE COURT: --isn't it?

9 MR. ROBERTS: It could be a reason if anybody other
10 than APS, who's standing in this Court trying to thwart this
11 plan, is fighting it. We don't have the Creditors' Committee.

12 THE COURT: Well, --

13 MR. ROBERTS: We don't have any other creditors. We
14 have someone just trying to thwart a technical -- a plan on a
15 technical basis.

16 THE COURT: Well, so the Rules don't matter depending
17 upon who is raising the objection?

18 MR. ROBERTS: I would not say that. I would say this
19 Court's discretion can take into account who is raising the
20 objection and why.

21 Thank you.

22 THE COURT: Mr. Salomon, why did you not file this
23 motion timely?

24 MR. SALOMON: Your Honor, initially when I saw the
25 complaint that was filed on August 4, I had issues about

1 whether or not there was even standing on the part of APS to
2 arrogate the powers of the Debtor or the Committee to object
3 to our claim, and that is the reason I did not do it sooner.
4 I did do it -- I did do it only very recently. I apologize if
5 that has created inconvenience. Apparently, it did not -- the
6 delay in filing the motion did not affect APS's ability to
7 respond to the motion and to argue the motion today.

8 THE COURT: Well, I'm going to allow the TAG claim in
9 Class 9 temporarily for purposes of voting on the plan. I
10 don't believe there is any prejudice to APS. They've
11 certainly not been able to identify any prejudice.

12 I also agree that it is a technical objection, although
13 technical objections should not always be minimized. But
14 under the circumstances of this case, I don't see any harm to
15 anyone by allowing or by granting the motion and authorizing
16 the temporary allowance of TAG's claim for purposes of voting
17 in its single creditor class, that being Class 9.

18 So if you'll upload that order, Mr. Salomon, I'll sign it.

19 MR. SALOMON: Thank you, Your Honor.

20 MR. PARHAM: Your Honor, with respect to the
21 Creditors' --

22 THE COURT: Mr. Parham?

23 MR. PARHAM: -- Committee motion, I think we may have
24 a similar issue. We would ask, though, that the Court go
25 ahead and expedite the hearing on our motion, which they have

1 indicated they are accepting --

2 THE COURT: Blackberry. Do you have a Blackberry in
3 your pocket?

4 MR. PARHAM: I'm sorry. Oh, you know, I do. It was
5 turned off, but I guess it still picks up some. I apologize.

6 We would ask that the Court expedite the hearing on our
7 motion to have them deemed to have accepted the plan,
8 particularly in view of their statements to the Court that
9 they're at least accepting of the ultimate relief that we were
10 asking for.

11 THE COURT: Any objection to the Court proceeding to
12 the merits?

13 MR. ROBERTS: No, Your Honor.

14 THE COURT: All right. Then we'll go to the merits.

15 MR. PARHAM: Your Honor, as you know, in light of the
16 TAE no-vote, the Committee yesterday filed a motion under
17 various alternative grounds seeking to have their vote deemed
18 in acceptance and have them deemed an accepting creditor of
19 the plan.

20 In light of their statement that they are agreeable to the
21 relief sought, that they be an accepting creditor, and without
22 going then to the merits of any of the particular arguments --
23 I understand that the *Link* case might not be quite what we
24 thought it was when we saw your name on the opinion, for
25 example, today -- we would ask that the Court go ahead and

1 deem TAE an accepting Class 8 creditor.

2 THE COURT: Opposition to that?

3 MR. WINIKKA: Your Honor, Dan Winikka, for the
4 record.

5 Not opposition, but I simply stand -- or the Court knows,
6 we've stated previously, we would be agreeable to our vote
7 being changed from a reject to an accept based on the
8 settlement we've reached with TAG that was announced on the
9 record earlier today.

10 THE COURT: Any opposition to the Court considering
11 the vote of TAE in Class 8 to be an acceptance?

12 A VOICE: No, Your Honor.

13 THE COURT: Very well. Then the Court will allow the
14 changing of the ballot such that Class 8 is also reflected to
15 be an accepting class vis-à-vis the Debtor's plan.

16 MR. ROBERTS: Then, Your Honor, going back to our
17 status on the confirmation of the plan, the Proponents rest.

18 THE COURT: Very well.

19 Does the Objector have any further evidence it wishes to
20 introduce?

21 MR. GOOD: No, Your Honor.

22 THE COURT: So the Objector rests as well?

23 MR. LEONARD: We do, Your Honor.

24 THE COURT: Very well. The Court will consider the
25 evidentiary record closed. Closing arguments?

1 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

2 MR. ROBERTS: Your Honor, I am aware that you read
3 pleadings and documents perhaps more thoroughly than other
4 judges I'm in front of, and so I'm going to -- I don't want to
5 say I'm going to make an assumption, but I'm not going to
6 thoroughly go through this plan that is in evidence. I'm
7 going to highlight what I think this plan is doing that's in
8 evidence and how it complies with 1129(a).

9 THE COURT: All right.

10 MR. ROBERTS: And in doing that, I'll go through some
11 of the other exhibits.

12 THE COURT: Please.

13 MR. ROBERTS: We have a plan that simply says that
14 Brantly, the Brantly Group, will pay \$7 million -- with some
15 adjustments, but approximately \$7 million -- within thirty
16 days for this plan to be effective.

17 THE COURT: Well, although you're given the ability
18 to extend that time.

19 MR. ROBERTS: And the Creditors' Committee and the
20 Debtor can't -- can extend it. You've heard the testimony of
21 Mr. Abercrombie: that \$700,000 should cover approximate
22 losses.

23 THE COURT: For thirty days. Not for any longer.

24 MR. ROBERTS: That's correct, which is something that
25 the Creditors' Committee and the Debtor have to take into

1 account, when they can take the \$700,000 and move on or agree
2 to an extension. You have not heard the details of the
3 Chinese government approval, but what has been admitted is
4 that there is a process in China by which they want to make
5 sure the money goes to the deal, and they need an order
6 confirming a plan to give it to the Chinese government, and
7 that is the process. And you have heard testimony that is not
8 discretionary. That is what they are required to do upon
9 having the evidence that the money is going to this deal.

10 So you have a process by which they've put \$700,000 at
11 risk. You have evidence that they have been trying to get
12 through that process, and you have evidence that they are
13 putting that \$700,000 at risk to -- after doing due diligence,
14 after looking at this company, and after hearing how much
15 money it could possibly cost them to realize their dream.

16 There is a legal question whether feasibility goes to
17 whether they're going to put up the money or that feasibility
18 goes to whether the plan is feasible if it becomes effective.
19 Either way, we believe we've met that burden of proof.

20 As the second step of feasibility, the question, we
21 believe, is whether or not the creditors are going to get what
22 they've been promised and what they voted on, which is
23 distributions out of the Creditors' Trust.

24 I didn't point out to you in the confirmation order,
25 simply because I forgot, but the Creditors' Committee has

1 appointed the Creditors' Trust to operate, to take the funds
2 and adjust claims and distribute funds. No one is relying on
3 the future of the Debtor to be paid the claim, their pre-
4 petitioned claim, except those that have chosen to do so. I
5 think it is extremely strong evidence to this Court that all
6 of these people have voted for the plan, that the Committee
7 endorses the plan, we have three major creditors who've
8 stepped up to the plate and agreed to extend over a million
9 dollars in credit. And why would any --

10 THE COURT: How do I know that?

11 MR. ROBERTS: Because Mr. Abercrombie testified that
12 he went to the holders of the open purchase orders and gave
13 them the choice whether to file a claim and not have to rely
14 on the future reorganized Debtor --

15 THE COURT: Right.

16 MR. ROBERTS: -- or to waive that claim and issue new
17 purchase orders.

18 THE COURT: But I guess I don't recall him giving me
19 a quantification of that.

20 MR. ROBERTS: He testified that he has reached
21 agreements with Saturn, Eck and Molly to --

22 THE COURT: I do recall that.

23 MR. ROBERTS: -- issue new purchase orders in a total
24 of \$400,000, \$220,000 and \$450,000, respectively.

25 THE COURT: Right. I do recall that. Thank you.

1 MR. ROBERTS: So we have creditors voting and we have
2 others extending credit.

3 With the same level of information, APS is saying this
4 Court should not approve this plan because it's not feasible.
5 I think the actions of the creditors prove that what we have
6 here is a group of Chinese that want to take an
7 entrepreneurial risk on what they believe is the future of the
8 Chinese market. And it is, by nature, speculative. But at
9 the same time, they are buying a piece parts business which
10 Mr. Kent Abercrombie testified on its own can be profitable.
11 They have the flexibility to put money in to get the
12 engineering done, to do the modifications, to do the FAA, in a
13 timeline that fits with them building helicopters or selling
14 engines in China. That has not changed, despite what APS says
15 that somehow the disclosure statement is different than what
16 Mr. Abercrombie said. All Mr. Abercrombie said was under a
17 conservative scenario, it could take this long and cost you
18 this much money. That's sound management.

19 I would also suggest to you that's a very wise thing for a
20 man to do when he's going to be a president of a company
21 that's owned by people that are saying, "We trust you to run
22 it. How much could this cost us?"

23 So I think we have a great deal of evidence, at least that
24 it's more probable than not that they are motivated to fund,
25 that it makes sense to the people in this courtroom other than

1 APS that they will fund, they're willing to bet that they will
2 fund, and that it makes no sense for someone to then pay \$7
3 million and then not fund losses in a company when they have
4 been informed from the very beginning that it's going to take
5 at least \$4 million more. That was before they completed
6 their due diligence.

7 So we also have now, as kind of a bootstrapping, putting
8 their money where their mouth is. \$700,000 to bet they're
9 going to pay \$7 million. And once they pay \$7 million, what
10 sense does it make for them not to put the money in to run the
11 company?

12 Even if that were our burden of proof, all of APS's cases
13 on future projections, all -- every one of them, are cases
14 where creditors are relying on those projections to get paid.
15 Frankly, under the APS plan, if it were here, they'd be on the
16 flip side of the coin, because their plan is kind of a mirror
17 image. If you're not relying on the future viability of the
18 Debtor to get paid, then the feasibility of the plan doesn't
19 rely on that. It certainly makes sense if you're offering a
20 payout and someone comes up with pro formas that says, "I'm
21 going to make \$10 million," that you have to go through those
22 pro formas thoroughly to make a finding on feasibility. That
23 is not the case here, and we have filed a brief to support
24 that. But that's the long and short of it.

25 So, 1129(a)(1), I think that -- and also there is

1 certainly no evidence of any -- that this plan has been
2 proposed in bad faith or forbidden by law. APS and another
3 lawyer who will handle this argues that they may need to go
4 get permission from some U.S. government agency. We do not
5 believe that's the case. We're talking about aircraft engines
6 for Cessnas, essentially.

7 I believe that with respect to each impaired class of
8 claims or interest, each holder of a class or claim of
9 interest has accepted the plan or will receive what they'd
10 retain under a Chapter 7. In the exhibits, when we did not
11 spend time on it, you have an Exhibit K which is the analysis
12 of Lane Faulkner, the accountants for the Creditors'
13 Committee, which show a liquidation analysis of less than ten
14 cents on the dollar distribution to unsecured creditors. You
15 have an analysis of the Brantly plan of from 58 to 100
16 percent, depending on various contingencies.

17 THE COURT: Where is the Brantly plan analysis?

18 MR. ROBERTS: It's on the second page, Your Honor.

19 THE COURT: And what dictates whether it's the 37.66
20 to 100 percent?

21 MR. ROBERTS: Your Honor, we have in our plan, and
22 also put in the disclosure statement, you had insurance
23 contingencies, insurance claims, you had a question of whether
24 we would be able to work a deal with the landlord. And under
25 the plan, by the way, the landlord's lease is rejected, and we

1 don't have any evidence that that will change. But so for the
2 purpose of this, there's a \$400,000-and-some-odd claim that
3 could create some dilution. And the purchase orders, which is
4 a very difficult number to specify. For example, Zonzi is one
5 of the large ones that has a claim of about \$1.1 million.
6 Well, that might be their outstanding purchase orders, not
7 their real claim for damages for refusal to accept delivery.
8 And so all those things figure into a variation on payment
9 under any plan.

10 THE COURT: So, am I reading this correctly that the
11 range of payment to unsecureds under the plan is from 37.66
12 percent to 100 percent?

13 MR. ROBERTS: No, I believe it's 58 percent, Your
14 Honor.

15 THE COURT: Then --

16 MR. ROBERTS: The bottom line.

17 THE COURT: -- what are the percentages above that?
18 What's the 37.66 to 47.06?

19 MR. ROBERTS: That's the TAG claim. TAG is getting a
20 distribution --

21 THE COURT: Of between 37 and --

22 MR. ROBERTS: Of between 37 and 47.

23 THE COURT: -- 47?

24 MR. ROBERTS: Yes.

25 THE COURT: So the unsecureds, even with the

1 rejection claims factored in, you're telling me, under the
2 plan will get a distribution of anywhere from 58 to 100
3 percent?

4 MR. ROBERTS: Yes.

5 THE COURT: Okay.

6 MR. ROBERTS: One factor I didn't say, either: There
7 could be claims subject to objection because of creditors.

8 THE COURT: Of course.

9 MR. ROBERTS: So, that could be figured.

10 So there's no question that the creditors -- well, first
11 of all, each -- I think we only had one no vote on this plan
12 in the entire plan, and that was AirSure Limited, the
13 insurance broker. And we're showing that the unsecured
14 creditors --

15 THE COURT: APS didn't vote no?

16 MR. ROBERTS: APS's vote did not count because we had
17 filed an objection to their claim. Maloney Bean -- no, excuse
18 me. That's not right. We did not file an objection to APS.
19 I do stand --

20 THE COURT: So APS voted no?

21 MR. ROBERTS: APS voted no, but APS will get paid
22 more than it would in a liquidation as an unsecured creditor.
23 I do stand corrected.

24 I'm sorry. I skipped over (a)(5). Your Honor, the plan
25 discloses that Kent Abercrombie will be the director and

1 officer, and the Brantly Group would be the 100 percent
2 shareholder. There's been no evidence that that is not in the
3 best interests of creditors. As a matter of fact, it's the
4 same management group as proposed under the APS alternative
5 plan.

6 The tax claims have not been an issue, but the tax claims
7 under the treatment of tax claims track the language of the
8 statute. We have had no objections filed by tax creditors to
9 the plan.

10 Under (a)(10), as you can see from our ballot summary, we
11 have a class of claims that is impaired under the plan that
12 has accepted the plan without accepting -- including
13 acceptance of an insider.

14 And I will go back to this one moment. (a)(11) says:
15 "Confirmation of the plan is not likely to be followed by the
16 liquidation or the need for further financial reorganization
17 of the Debtor or any successor to the Debtor under the plan
18 unless such liquidation or reorganization is proposed in the
19 plan." And our point is, what is the purpose of that? What
20 is the scope and purpose of that section? And it is -- as one
21 person put it, if this were an asset sale and the creditors
22 get the money, it doesn't matter what the buyer does, because
23 the focus of 'no need for further reorganization or
24 liquidation' is so you don't come back and try and restructure
25 the same debts that you restructured in the first case.

1 That's what we believe is an appropriate reading. Even --
2 even if it were broader, I think we've put on sufficient
3 evidence that it makes no sense and no one has put on any
4 evidence that Brantly would make this level of investment with
5 the knowledge that it has and not provide the necessary
6 capital.

7 You also heard Brantly's attorney make the representation
8 that they're concerned about being too specific because of
9 APS's conduct, and so we have put on, I believe, sufficient
10 evidence with that in mind, asking the Court to take judicial
11 notice of the pleadings filed in this case, filed by APS, and
12 who they are and what their apparent motivation is.

13 The terms of the plan comply with (a)(12). (a)(13)
14 doesn't apply. (14) does not apply. (15) does not apply.
15 (16) does not apply. And I don't think we have to go to
16 (b)(1) because we have all accepting classes.

17 So, Your Honor, I believe we have met our burden. I think
18 that it was extraordinary, quite frankly, with APS filing a
19 competing plan, a disclosure statement that has not been
20 approved that says, "We're going to pay you 100 cents on the
21 dollar," that these creditors held firm and said, "Look. We
22 want this plan."

23 And you could put it this simply. This plan provides for
24 \$7 million to creditors and no litigation, and an alternative
25 that hasn't been approved but they've been told about provides

1 \$2-1/2 million and ongoing litigation with TAG and TAE. We
2 believe this plan is in the best interests of the estate and
3 we have met all the requirements of 1129(a).

4 THE COURT: Other supporters wish to speak?

5 CLOSING ARGUMENT ON BEHALF OF THE CREDITORS' COMMITTEE

6 MR. PARHAM: Your Honor, I would just reiterate what
7 I said at the outset, and that is that the Committee is
8 comfortable with this, with Brantly and -- or, the purchaser.
9 We think it's a real company, that it has a real strategic
10 reason to do this. The Committee is very much in support of
11 it, as are the creditors. It would be nice if there was a CD
12 sitting here with \$7 million and we could look at it and say,
13 "Well, there is no issue." But I don't think that's required.

14 You know, the -- there could have been more evidence on
15 the issue, certainly.

16 THE COURT: It's pretty thin, you've got to admit.
17 Nobody has seen a financial statement. Nobody has seen a bank
18 account statement. We really know nothing about this
19 purchaser other than he has bought the operation in Vernon,
20 Texas, on some terms that we have no idea of what they were.

21 MR. PARHAM: Well, we do know that they have a
22 helicopter manufacturing facility in China.

23 THE COURT: Well, an empty facility in China.

24 MR. PARHAM: Agreed. It could be a -- there could be
25 more evidence on it. All I can say is that we have a

1 significant amount of industry experience sitting on this
2 Committee, and really from the very get-go, they thought this
3 was a great idea about Brantly and, frankly, that this would
4 work and that these guys were going to do the deal. And that
5 was our first -- our first conversation was, well, you know,
6 who are these guys and what do they do?

7 THE COURT: But, frankly, that's just a feeling,
8 because nobody, apparently, has seen any financial information
9 with respect to the purchaser other than the fact that
10 \$700,000 is now sitting in the DIP account. Which is not
11 insignificant. Don't get me wrong.

12 MR. PARHAM: Right.

13 THE COURT: But everybody's going on gut instincts,
14 apparently.

15 MR. PARHAM: I think there is a significant amount of
16 that. And, you know, all that you can do to, I guess, augment
17 gut instincts are look at factors that you do know, like the
18 fact that there is a company, that they are funding on some
19 basis, that there is a significant deposit, that they have
20 made numerous trips over here. And it just -- it appears
21 they're real and it appears this is a real deal. And would it
22 be nice if there was more evidence? A financial statement? A
23 CD? Absolutely. No question. But --

24 THE COURT: And why does it make any sense to permit
25 the delay -- I'm troubled by the provision in the plan that

1 permits the delay of closing beyond the amount of the deposit
2 that would fund those losses. Why does that make any sense?

3 MR. PARHAM: I think it only makes sense, quite
4 frankly, if at the conclusion of that period we thought we
5 were within a day or so of closing. I mean, you -- and maybe
6 the better way to have handled it would have been to say that
7 we could come back to the Court and ask for an extension on an
8 emergency basis if we got to the end of the 30-day period.
9 That might have been a better way.

10 Certainly, from the Committee's perspective, you know, our
11 view is that it should close within thirty days. We're
12 hopeful it will close much sooner and, in fact, we've built in
13 that the purchase price adjustment is done August 31,
14 regardless. So, as they note, --

15 THE COURT: Because the Debtor doesn't have any money
16 to -- at least as I think I understand, the Debtor is out of
17 cash. The Debtor will be operating at a loss if we get past
18 the thirty days where the \$700,000 is expected to cover the
19 losses.

20 MR. PARHAM: That is correct. That is correct. And
21 mainly that's because there's a \$400,000 insurance payment due
22 next month. And it's not bleeding -- except for that
23 insurance payment, it's not bleeding that fast. But next
24 month is going to be not a good month. Now, they currently
25 have, I think, \$2 or \$3 million in the bank, maybe more than

1 that. So it's not as though they're going to be completely
2 out of business. But, yes, the \$700,000 would cover just
3 those losses. Now, --

4 THE COURT: But, of course, we'd be administratively
5 insolvent at that point, presumably.

6 MR. PARHAM: We would have a problem at that point.
7 And so, and to go back to the statement I made, the --
8 assuming that they close, the economic risk of those days is
9 on the purchaser and not the creditors, which --

10 THE COURT: Agreed.

11 MR. PARHAM: -- which was a good thing.

12 In our view, in the 30-day and the ability to extend was
13 simply that you don't want to be one or two days out and be
14 locked, so we thought that we would go that way. It may be,
15 in hindsight, have been better, and maybe they would agree,
16 that it would be that it would be thirty days but we could
17 come back to the Court and ask for more time on some sort of a
18 showing of cause.

19 And with that, I think that the Committee would ask that
20 the plan be confirmed.

21 MR. OKIN: Your Honor, if it would make the Court
22 feel more comfortable about the thirty days, we would
23 certainly agree to modify the terms of the plan and the
24 confirmation order to provide that any extension beyond the
25 thirty days would be on an expedited basis in front of the

1 Court. Our hope -- I know it's just our statements -- but our
2 hope is that we'll close this transaction much sooner than
3 thirty days. As Mr. Parham pointed out, the working capital
4 adjustments start on Monday and we need -- we would rather
5 have control rather than not.

6 THE COURT: Let me ask the proponents to clarify one
7 thing. I don't understand your definition of a final order,
8 so help me understand your definition of a final order. Is it
9 anticipated that the plan can go effective if an appeal is
10 filed? Or not? Because I can read your definition either of
11 two ways, and that's not a good thing.

12 (Counsel confer.)

13 MR. ROBERTS: Give us one minute.

14 THE COURT: The definition appears on Page 7 of the
15 plan.

16 MR. ROBERTS: Perhaps we should change the language
17 with the intent as, first of all, the thirty days for funding
18 is from the entry of an order.

19 THE COURT: Correct. I understood that.

20 MR. ROBERTS: Right, and that the final order is one
21 that is not stayed when the appeal period has run.

22 THE COURT: All right. So --

23 MR. ROBERTS: Which, so if it's not stayed --

24 THE COURT: So if it's not stayed --

25 MR. ROBERTS: -- and they file notice of appeal, that

1 thirty days runs --

2 THE COURT: It's still final?

3 MR. ROBERTS: -- and the final order would be --

4 well, yes. If it's not stayed, --

5 THE COURT: So, let me ask it this way.

6 MR. ROBERTS: -- it becomes a final order.

7 THE COURT: Under this plan, is the purchaser
8 closing so long as there is no stay of the order of
9 confirmation?

10 MR. ROBERTS: I think I'll let the purchaser answer
11 that.

12 MR. OKIN: As long as there's no stay and as long as
13 the ten days for -- either if there has been an appeal filed
14 and there is no stay or --

15 THE COURT: The ten --

16 MR. OKIN: -- ten days has run and no appeal has been
17 filed.

18 THE COURT: All right.

19 MR. OKIN: But Your Honor, just to clarify, because
20 there is one other problem in that language in the section in
21 the plan on Conditions --

22 THE COURT: 11.2?

23 MR. OKIN: -- Conditions Precedent 11.2(a).

24 THE COURT: Yes?

25 MR. OKIN: I'm not sure if that's just -- it can be

1 read multiple ways or if it's misworded. The intent there is
2 that a confirmation order needs to be entered by August 31st.
3 It doesn't have to have been -- become final by the 31st, but
4 it is a -- we just discussed the condition precedent for it.

5 THE COURT: That was part of why the confusion
6 existed.

7 MR. OKIN: Right.

8 MR. ROBERTS: Your Honor, I -- it may not be clear,
9 but I read (a) to say it must be entered by the 31st and a
10 condition also is it must be a final order. In other words,
11 an unstayed order, not by the 31st. These are conditions
12 precedent to an effective date, and for there to be an
13 effective date --

14 THE COURT: Yes.

15 MR. ROBERTS: -- it has to have been entered and it
16 must be a final order. No time running from the final order,
17 but it must be a final order or there wouldn't be an effective
18 date.

19 THE COURT: Right.

20 MR. ROBERTS: So if it's stayed, there won't be an
21 effective date.

22 THE COURT: Right. All right. Does anyone else wish
23 to be heard in connection with confirmation of the plan that
24 is supporting confirmation?

25 A VOICE: I'm sorry. You asked for comments in

1 support?

2 THE COURT: Yes.

3 MR. OKIN: Your Honor, if I might just add a few
4 words. I don't want to belabor this.

5 CLOSING ARGUMENT ON BEHALF OF PROPOSED PURCHASER

6 Your Honor, it's true we know nothing about -- we've
7 presented no evidence specific to the purchaser's financial
8 wherewithal. Some of that, I believe, is the distance. Some
9 of it is the language. Some of it is cultural, in the first
10 place. And I knew about that when we got involved in this
11 transaction. I think, and I hope, and it was intended that
12 the deposit that was put down in this case was -- compensates
13 for that. That was the intent. Everybody I've told about how
14 much we put down was shocked that we put a \$700,000 deposit
15 down. And the intent there was to show people who were
16 undoubtedly skeptical at the beginning that we were serious.

17 Beyond simply putting down a large deposit, though, I
18 believe there is more than just a gut feel by members of the
19 Creditors' Committee and by the Debtor. Mr. Abercrombie has
20 met with the principals both here and in China. The
21 Creditors' Committee has had conversations with Mr. Tong and
22 has had -- there have been conversations directly to China.

23 There may still not be specifics before the Court, but I
24 do think the Court shouldn't discount the strength of the
25 support by the creditors and by the Committee and by the

1 Debtor, by Mr. Abercrombie, who's worked very closely with
2 APS's principals for this plan in the belief that they will
3 fund this, because that's not insignificant.

4 And there was a question earlier today from -- that Mr.
5 Good asked Mr. Tong about guarantees of funding. And I've
6 been doing this long enough that I've seen bank letters of
7 commitment that aren't really worth anything more than what
8 we've got here. At the end of the day, we're talking thirty
9 days with a \$700,000 guarantee of closing, and I believe, Your
10 Honor, that that should be sufficient for the creditors'
11 wishes to be carried out here.

12 Thank you.

13 THE COURT: Thank you. All right. Objector?

14 CLOSING ARGUMENT ON BEHALF OF AVIATION PARTS SUPPLY

15 MR. GOOD: Your Honor, I'll be very brief. I think
16 the evidence that I highlighted at the outset did not
17 materialize. I think the Court has properly characterized it
18 as thin. From the objective of evidence that's before this
19 Court in terms of Brantly's ability to fund, ability --
20 commitment to fund, timing, to my judgment, there's no
21 evidence.

22 THE COURT: But what's the harm to running a 30-day
23 risk?

24 MR. GOOD: That's a good question. In my notes here,
25 I said the position that the Court's in right now is there's

1 \$700,000 up. There may be a back-up bid. But there's
2 \$700,000 up, and there's a 30-day window that maybe this will
3 all go well and everybody will fund and that sort of thing.
4 And I've got to come back to the law, and that's this: The
5 burden of proof for today, August 26, is on the proponents to
6 bring you the evidence, bring the Court the evidence. And the
7 evidence that they brought to you, in addition to the touchy-
8 feely stuff, which in my judgment does not rise to the level
9 of objective evidence that the Court should be considering,
10 the objective evidence is they've put up \$700,000, which is,
11 using my numbers, it's some six percent of the total cost to
12 fund the plan, to fund it and then run the company for a year.

13 THE COURT: Well, but, no offense, why should I care
14 about whether Reorganized -- you want me to be focused on the
15 plan as if the creditors are relying upon the operations of
16 the Reorganized Superior for their payment. And at least --
17 virtually no creditor is relying upon the operation of the
18 Reorganized Debtor for their payment. They're solely relying
19 upon the funds that are going to come in if Brantly is real
20 and if Brantly closes the transaction.

21 And those creditors who are agreeable to looking to the
22 Reorganized Debtor had the choice not to, and they chose to.

23 So, I hear you, and I'm certainly familiar with the cases
24 that you've cited me to, but it does seem that the factual
25 circumstances of those cases and those plans are different in

1 that in those cases the creditors were relying upon the
2 operation of the reorganized debtor for their payment, which
3 is really not the case here.

4 MR. GOOD: I don't disagree with you, Your Honor. In
5 the academic world, I mean, that's still a question and
6 there's still evidence and there's still a comfort factor.
7 But in the real world in this case, having heard the purchase
8 order contractors agreeing to what they're agreeing to, you
9 know, God bless them. I hope that it all works out.

10 But the evidence not on the feasibility in terms of
11 projections, but the evidence before the Court today in terms
12 of Brantly's ability to fund, commitment to fund: there isn't
13 any. The only evidence, I submit to Your Honor, that they
14 have the ability and they're committed to the ability is the
15 \$700,000 that's up.

16 THE COURT: Well, and the fact that they've made
17 trips here. I mean, I don't think it's quite as bad as you're
18 telling me it is, but I'll agree with you that it's very thin.

19 MR. GOOD: Yes. And not to be caustic: yes, they've
20 made trips here. I heard that pronouncement by several
21 people. Why aren't they here? Why aren't they here? I mean,
22 they're putting the burden on this Court to enter a
23 confirmation order so that something is going to happen in
24 China. To my way of thinking, that's the other way around.

25 So, Your Honor, that's all I'm going to say. You know our

1 position, and our position is there is either no admissible
2 evidence to support the funding or insufficient admissible
3 evidence to support the funding for confirmation of the plan.

4 Thank you, Your Honor.

5 THE COURT: Thank you very much. Mr. Roberts?

6 MR. ROBERTS: Your Honor, I just wanted to clear up
7 what I believe is a misconception on the administrative
8 insolvency.

9 THE COURT: All right.

10 MR. ROBERTS: In the plan and in the pro formas that
11 we've presented, there is an assumption that there's \$2
12 million in cash as of August 31 and that there's \$9.14 million
13 in gross receivables and inventory. Those are the numbers.
14 Those are the numbers that could slip, according to Mr.
15 Abercrombie by approximately \$700,000 in a month? Nowhere
16 close to administrative insolvency. Those numbers, his
17 testimony is that you take the \$9.14 [million] and the \$2
18 million in cash.

19 You've heard before about --

20 THE COURT: But I thought we were about to run out of
21 cash?

22 MR. ROBERTS: We have -- we have over \$2 million.
23 The \$2 million, to be clearer, is you're netting out estimated
24 administrative expenses to get to the \$2 million. There's \$2
25 million left to pump into the company.

1 THE COURT: After administrative expenses have been
2 --

3 MR. ROBERTS: Right. We have sufficient cash right
4 now, estimated, to pay accrued administrative expenses and
5 have approximately \$2 million. That's what's in the pro
6 forma. So we're not. It's -- the problem is we want to make
7 sure there's \$2 million so the \$7 million goes to the
8 creditors instead of being eaten up by administrative expenses
9 in this incredible continuing saga of a legal battle. That is
10 our problem.

11 And that we have other motions. We have APS. We have
12 other issues. And by not confirming this plan, I think you're
13 risking administrative insolvency, greater administration
14 insolvency, because you have what was so carefully and most
15 difficultly put together -- which is settlements with TAE,
16 TAG, the Unsecured Creditors -- that could all fall apart.

17 You saw how fragile it is. When we have a Rule 11
18 agreement in the record that says TAE will vote for the plan
19 if it gets \$500,000, they turn around and say, "No, we won't,"
20 and here we are in confirmation saying, "Oh, okay, we will, if
21 we get some more money from TAG." That's just how difficult
22 this case has been. I've been doing this 27 years and I
23 haven't had quite this experience of something new and
24 different coming up unexpected and costing these creditors
25 money.

1 Finally, to the extent that the Debtor, I mean, the Buyer
2 said he'd be willing -- to modification, I'll state for the
3 proponents, would be willing to put a modification in the
4 order that the 30-day deadline must be met or the Court can
5 extend it for cause upon motion filed before that thirty days
6 goes up. You have heard the reasons for from the Committee,
7 is we're talking about technical. Even the United States
8 government is going to do things slower than they're supposed
9 to. That's the concern of locking it down to exactly thirty
10 days. And I think that can address it.

11 And the Court can certainly determine, if we're back in
12 thirty days, if we came up for some other reason for cause,
13 I'm sure you'd have quite a good recollection of this day.

14 THE COURT: Well, tell me what you're proposing to
15 change in the plan with respect to the thirty days.

16 MR. ROBERTS: I believe it would be in the Conditions
17 Precedent.

18 THE COURT: I'm guessing it would have to be in 11.3,
19 where --

20 MR. ROBERTS: I'm sorry. Are we talking about the
21 plan? Oh, I'm looking at the disclosure statement.

22 THE COURT: Page 27.

23 A VOICE: 11.3.

24 MR. ROBERTS: I'm sorry. I was looking at --

25 (Counsel confer.)

1 MR. ROBERTS: That's what I was reading. I was
2 reading it on the wrong page.

3 (Counsel confer.)

4 MR. ROBERTS: Your Honor, I think the easiest
5 language, I'd say, notwithstanding the language in 11.3 and
6 11.5, the --

7 THE COURT: Well, why don't we just take out 11 -- I
8 mean, it seems like the simplest is, if you're proposing that
9 the thirty days can only be extended by court order --

10 MR. ROBERTS: For cause.

11 THE COURT: -- on motion, --

12 MR. ROBERTS: Yes.

13 THE COURT: -- then you've got to delete 11.2(c) from
14 11.3, don't you?

15 MR. ROBERTS: I'm sorry. 11.2(c)?

16 THE COURT: Right, which is the funding. Don't you
17 just --

18 MR. ROBERTS: No, we want to keep that in there.

19 THE COURT: No.

20 (Counsel confer.)

21 MR. ROBERTS: Oh, take it out of 11.3?

22 THE COURT: Correct.

23 MR. ROBERTS: I'm sorry.

24 THE COURT: And then you can say that Condition
25 11.2(c) may only be modified -- I mean, I don't want to write

1 your plan for you, but basically --

2 MR. ROBERTS: I'm following you. Condition 11.3 may
3 only be modified --

4 THE COURT: 11.2(c) can only be modified on motion
5 and after notice and hearing.

6 A VOICE: Your Honor, can we at least provide,
7 though, for -- the notice -- obviously, there needs to be
8 notice, but just the general reference of notice there makes
9 me a little nervous in that we're likely to be facing an
10 emergency situation --

11 THE COURT: Well, I would expect that you'd file a
12 motion for expedited hearing. Certainly.

13 MR. ROBERTS: And we would propose to add a paragraph
14 to the order confirming plan making that edit to 11.3. So,
15 as I'm reading it, you would strike out after 11.2(a) the
16 words, "and Condition 11.2(c)." Add a sentence in the end and
17 say, "Condition 11.2(c) may be only modified upon motion after
18 notice and hearing."

19 I think 11.5 needs to be changed slightly.

20 THE COURT: Let's get there in one second.

21 MR. ROBERTS: Okay.

22 THE COURT: So, you're going to strike, so it will
23 say, "Brantly may waive any of the conditions set forth in
24 11.2 of this plan except for Condition 11.2(a), which may be
25 waived only with the concurrence of the Debtor and Committee,

1 at any time without notice, without" da, da, da, da, da. And
2 then a sentence: "Condition 11.2(c) may be modified only on
3 motion" --

4 MR. ROBERTS: Modified only on -- actually, modified
5 by order of the Court.

6 THE COURT: That works.

7 MR. ROBERTS: Upon motion after notice and hearing.

8 THE COURT: All right. And what are you proposing to
9 do about --

10 MR. ROBERTS: On 11.5, I would -- it should say, "If
11 Brantly does not satisfy Condition 11.(c)" and then 'and,' and
12 then I'd cross out "the Debtor and the Committee do not agree
13 to extend the date" -- "do not agree." So I'd say, "If
14 Brantly does not satisfy Condition 11.2(a) and the Court does
15 not extend the date of funding, the effective date shall not
16 occur and Brantly will forfeit its deposit."

17 THE COURT: You have Funding as a capitalized letter,
18 and that doesn't appear to be a defined term in the plan. So
19 is that -- isn't it the date of closing? Oh, I guess you used
20 Funding in 11.2(c).

21 MR. ROBERTS: That's where I was going to go look.

22 THE COURT: But it's not really defined there. But
23 do you want to just use funding, lower case, "As set forth in
24 11.2(c)"?

25 MR. ROBERTS: That would -- yes.

1 THE COURT: All right. And what, if anything, are
2 you proposing to do about the Final Order definition?

3 MR. ROBERTS: Well, I was just going to use the final
4 order to state that modification. I mean, it's my practice
5 where we've already got the plan filed to make any
6 modifications of the plan by adding a paragraph in the order.

7 THE COURT: Well, I understand, but what's the
8 language change you're proposing with respect to the
9 definition of Final Order?

10 MR. ROBERTS: Okay. Oh, the definition. I'm sorry.

11 (Pause.)

12 THE COURT: If any.

13 MR. ROBERTS: Yes. I don't know whether we just
14 announced a clarification, but it's -- if it's not clear, we
15 can change it, so --

16 (Pause.)

17 MR. ROBERTS: I can't speak for Brantly, but my
18 proposal would be to put a period after the word 'expired.' I
19 think the remainder must come from some other context because
20 I don't think it adds anything but confusion.

21 MR. OKIN: Well, Your Honor, I'd be willing, if
22 everybody else deems it necessary, to take out the "become
23 conclusive on all matters adjudicated thereby." I'm not --

24 THE COURT: All right.

25 MR. OKIN: But I think that it's still in full force

1 and effect is a necessary part of that --

2 THE COURT: Understood. Understood.

3 MR. ROBERTS: I have no problem with that, Your
4 Honor. So we'll just strike out the phrase, "after expired,"
5 and before the comma. "And is in full force and effect" will
6 stay in.

7 THE COURT: All right. Does anyone want to be heard
8 with respect to the proponents' proposed modifications of the
9 definition of Final Order, 11.3, the Waiver of Conditions
10 provision, or 11.5?

11 A VOICE: We do not, Your Honor. We followed the
12 changes.

13 THE COURT: Very well.

14 MR. ROBERTS: Your Honor, I have one final comment.

15 THE COURT: Please.

16 MR. ROBERTS: I don't think this is a hunch. I think
17 we're dealing with sophisticated creditors, a sophisticated
18 Creditors' Committee. If you look at who's on that committee,
19 we're dealing with people that are exercising their business
20 judgment. We have the president of Superior, who's being
21 offered a job by both of these people, standing up here and
22 testifying that he is in support of this and he believes it's
23 more likely than not that they will fund. I don't think it's
24 a hunch.

25 I think it's thin. You know, the Debtor can only get what

1 it wants. And I am a skeptical person. Too often you see
2 things fall apart. But I think what everybody has seen here
3 is, given the totality of the circumstances -- some of which
4 in this courtroom, and some of which just meeting and talking
5 to people and developing what level of trust you have.
6 Looking at their idea and thinking, "Well, that's not
7 harebrained. That makes sense." The fact that they came in,
8 they've moved quickly, they did their due diligence, they
9 finished, they put up their money: those aren't hunches. I
10 think those are things that fit into the business judgment of
11 creditors.

12 Thank you.

13 MR. WINIKKA: Your Honor, if I might be heard for one
14 minute.

15 THE COURT: Of course.

16 MR. WINIKKA: Dan Winikka for the record, Your Honor.

17 We would just ask for one clarification out of an
18 abundance of caution to make sure there's no misunderstanding
19 here. To the extent the plan is confirmed, Your Honor, it
20 provides for releases of TAE's -- any claims against TAE. And
21 subsequent to the filing of the plan, issues arose with
22 respect to this Rule 11 agreement. There was also an
23 objection to our claim filed alleging that there may have been
24 preferential transfers.

25 So, I mean, I would simply ask just for clarification of

1 the record that the Debtors and the Creditors' Committee
2 confirm that the releases of claims against TAE in the plan
3 would cover all of those potential claims or causes of action.
4 Which I think the language plainly does, but we would like --

5 MR. PARHAM: Certainly, our view is that the releases
6 provided for in the plan would release any claims the estate
7 would have in this.

8 THE COURT: Very well.

9 All right. Well, this case has posed interesting issues
10 from time to time, and today is no exception to that. I'm
11 going to eliminate the suspense. I will confirm the plan. Now
12 let me go back and explain why.

13 It is of significance to the Court that every impaired
14 class has voted to accept the plan, by overwhelming proportion,
15 with the exception of the current equity holders whose
16 interests are being canceled, so under the Bankruptcy Code, of
17 course, they're deemed to have rejected the plan. But the
18 Court is satisfied that the cancellation of the equity
19 interests in this case is appropriate under the circumstances
20 of the case and satisfies the requirements for confirmation in
21 accordance with the Bankruptcy Code.

22 The only party who is objecting to confirmation of this
23 plan is APS, who at least I believe -- and Mr. Good, you or Mr.
24 Leonard can clarify this for me -- purchased a claim
25 postpetition against the Debtor such that it became a creditor

1 of these estates postpetition. Is that --

2 MR. GOOD: That's correct, yes.

3 THE COURT: And that's perfectly fine. It's all right
4 to purchase claims to become a creditor in cases. But the
5 further twist here is that not only did APS become a creditor
6 voluntarily after the Debtor filed bankruptcy, it also has been
7 very interested in acquiring the Debtor. Again, that's also
8 good, and competition for acquisition of debtors in bankruptcy
9 is exactly what the Court encourages, likes, and is good for
10 creditors. But that certainly does cause the Court to reflect
11 upon what interest is motivating APS in opposing confirmation
12 of a plan that, if it closes, would make a distribution to them
13 and every other unsecured creditor ranging from 58 percent, as
14 estimated in Exhibit K, to 100 percent of their claim. The
15 record is undisputed that in liquidation unsecured creditors
16 would receive less than a ten percent distribution.

17 And so one could conclude that APS's interest in opposing
18 confirmation of this plan is not really as a result of their
19 economic interest as a creditor but rather is within their
20 interests as a potential acquirer of the Debtor. That is
21 furthered by a motion that I have not yet heard, but is set for
22 hearing today, although it looks like we won't reach it today,
23 which is to compel the Debtor to designate APS as the back-up
24 bidder in connection with the plan in the event that the
25 Brantly Group fails to close pursuant to the terms of the plan.

1 So, again, it's apparent to the Court that APS's most
2 significant interest here is likely as a result of their desire
3 to be the successful purchaser of the reorganized Superior Air
4 Parts and less motivated by their interests as an unsecured
5 creditor in these estates.

6 With that said, the Court has not disregarded their
7 objection and the basis of that objection. They are
8 undisputedly a creditor holding an unsecured claim against the
9 estate. They have every right to participate in these
10 proceedings, and have done so effectively, represented ably by
11 its counsel. And the issues that they raise are not
12 insignificant issues. The big issue that APS has presented to
13 the Court in opposition to confirmation of the plan today is
14 the issue of feasibility of the plan and whether the plan has
15 been proposed in good faith.

16 We focused more in the argument today on the feasibility
17 issue and less on good faith, but the Court is first satisfied
18 that this plan has been proposed in good faith. The plan is
19 jointly proposed by the Debtor and the Official Committee of
20 Unsecured Creditors. Clearly, both parties are acting in the
21 economic interest of the creditors in attempting to succeed in
22 emerging from Chapter 11 by the Reorganized Debtor. So there
23 is nothing that has been introduced into evidence that would
24 suggest anything but the Debtor's good faith in proposing this
25 plan, as it was joined in by the Official Committee of

1 Unsecured Creditors. So the Court will overrule the objection
2 that the plan was not proposed in good faith.

3 With respect to feasibility, there are really two
4 feasibility issues. The first is feasibility of the
5 Reorganized Debtor as an ongoing business entity. As the
6 Debtor's current president and anticipated president post-
7 confirmation has testified, the purchaser of the Reorganized
8 Debtor will be required to infuse additional capital into this
9 debtor to the extent the Debtor is going to be successful in
10 its ongoing post-reorganization business operations.

11 There is very thin evidence with respect to the financial
12 wherewithal of the Brantly Group to do this. We have no
13 financial statement of the acquirer. We have no bank statement
14 of the acquirer. What we do have is a \$700,000 deposit towards
15 the purchase, which really doesn't go to the issue of funding
16 for ongoing operations of the business enterprise, although as
17 counsel for the proponents has argued, it does indicate an
18 interest in closing the transaction, because at this point the
19 money is "hard" in the sense that, if Brantly fails to close,
20 they will lose \$700,000, which is not an insignificant amount
21 of money to put up to then simply walk away from for no reason.

22 But more importantly, the Court is not as concerned about
23 the feasibility of ongoing operations under the unique
24 circumstances of this case, and that is there is no creditor of
25 which the Court is aware that is relying upon the future

1 operation of Reorganized Superior Air Parts from which to pay
2 its claim other than a handful of executory contract parties
3 who have agreed to look to the Reorganized Debtor for their
4 payment in lieu of their executory contract being rejected by
5 the Debtor and their participation as an unsecured creditor for
6 their rejection claim. Every other unsecured creditor in these
7 cases is not looking to the Reorganized Debtor for payment of
8 their unsecured prepetition claim. Rather, they are looking to
9 the Creditors' Trust as the source of that payment, and
10 provided that Brantly closes on the plan, the source of those
11 funds will be assured to creditors.

12 So the risk that APS has argued exists with respect to the
13 future viability of Reorganized Superior Air Parts is of no
14 concern to the Debtor's prepetition unsecured creditors except
15 with respect to a handful of parties who, as the Court has
16 said, have agreed to modify the terms of their executory
17 contracts and to have those modified contracts assumed by the
18 Reorganized Debtor and satisfied by the Reorganized Debtor from
19 future business operations.

20 From the Court's perspective, those handful of unsecured
21 creditors have essentially agreed to assume the business risk
22 associated with the Reorganized Debtor's continued operations,
23 and as a result of that the Court will not second-guess their
24 willingness to move forward with the Reorganized Debtor in the
25 future.

1 Turning to the other feasibility issue, that relates to the
2 feasibility of Brantly coming up with the additional \$6.3
3 million that is required to enable a closing to occur under the
4 terms of this plan. APS argues that there is insufficient
5 evidence from which the Court can find that the plan is
6 feasible because of the proponents' failure to introduce a bank
7 commitment letter, financial statements of the Brantly Group,
8 or some other evidence that establishes the financial
9 wherewithal of the Brantly Group to actually close the
10 transaction.

11 The Court certainly would be happier if such evidence had
12 been introduced. That would make a feasibility finding much
13 simpler. However, the Court has been offered the explanation
14 of at least why it is difficult for the Brantly Group to have
15 provided evidence of funding, and that is because of relatively
16 cumbersome procedures that are required before Chinese
17 nationals are permitted to take funds out of China and invest
18 them in a U.S. business.

19 The Court has already expressed its view that the
20 evidentiary record in support of feasibility of Brantly to
21 close is thin. The Court agrees that the record is thin. But
22 notwithstanding the thinness of the record, the Court is
23 satisfied that a slightly more than preponderance of the
24 evidence supports the Court's view that this plan is feasible
25 and that it is more likely than not that Brantly will close and

1 fund the plan.

2 We have the \$700,000 of cash that is currently sitting in
3 the debtor-in-possession account. We have the explanation of
4 why further funds are not yet available. We have the fact that
5 Brantly's representatives have traveled to the United States in
6 anticipation of this acquisition. We have the fact that
7 Brantly has made another acquisition in Vernon, Texas in a
8 related industry, and is apparently funding those operations on
9 some level, although certainly we know little about the basis
10 upon which Brantly is funding those operations.

11 Taken on a cumulative basis, the Court will find that the
12 Debtors and the Committee, as proponents of this plan, have
13 carried their burden of proof. But the Court agrees that that
14 is a close question on the factual record that has been made
15 before the Court today.

16 The Court further concludes, however, that there is little
17 risk to the estate by taking a chance on whether Brantly will
18 close. The evidence is undisputed that the \$700,000 deposit,
19 which Brantly will forfeit if it does not close, is sufficient
20 to fund operations over the course of the next thirty days,
21 which is the period of time that Brantly has to complete the
22 governmental approval process so that it can take funds and
23 spend them here in the United States to complete this
24 transaction.

25 So, in short, if there are losses over the course of the

1 next thirty days while we wait to see if the closing occurs,
2 those losses are covered by the deposit that will be forfeited
3 by Brantly if no closing occurs. And of course, if a closing
4 occurs, then the Unsecured Creditors will receive an extremely
5 substantial recovery in this case that may be as much as 100
6 percent recovery.

7 With respect to all of the other requirements of
8 confirmation as set forth in Section 1129 of the Bankruptcy
9 Code, the Court is satisfied based upon the evidentiary record
10 that has been made that the proponents have also satisfied
11 their burden of proof here today and have established that the
12 plan complies with the requirements of the Bankruptcy Code for
13 confirmation and should be confirmed.

14 The Court had not seen a copy of the proposed order
15 confirming the plan, so I'm going to take a few minutes and
16 review that, since obviously I understand that the entry of an
17 order that is acceptable to the proponents and the purchaser is
18 a condition to the plan going forward. So let me take just a
19 few moments and review that proposed form of order.

20 (Pause.)

21 THE COURT: I don't understand -- well, I found a typo
22 in Paragraph 10. "The proponents of the plan have" instead of
23 "has." But I don't understand the first sentence of 14. "The
24 only equity interest is that of the Debtor. Therefore, 1129(b)
25 is not applicable." I don't follow that.

1 MR. BRESCIA: Your Honor, I've been the primary
2 architect of the order, with input from a lot of different
3 people. My understanding was is that, you know, sometimes
4 there are -- equity interests have different voting
5 circumstances, and so, you know, we have to have proxies and
6 other people voting, and so --

7 THE COURT: Well, who are the shareholders?

8 MR. BRESCIA: TAG is the only shareholder I know of.

9 THE COURT: Right. But so that's a third party.

10 MR. BRESCIA: Sometimes there can be other kinds of
11 equity interests, I guess.

12 THE COURT: Right. But -- oh. Well, but we have to
13 -- TAG is deemed to have rejected because its shares are
14 canceled. So we've got to cram the plan down. So I don't
15 understand that sentence, that 1129(b) is not applicable. It
16 is applicable, because TAG is deemed to have rejected.

17 MR. BRESCIA: The -- with regard to cram-down of
18 interests, that is correct, Your Honor. You're right. So
19 that's probably not a proper phrase.

20 THE COURT: All right. So I would propose to strike
21 the first sentence, because I don't think it's accurate.
22 Anybody disagree with that?

23 (No response.)

24 MR. BRESCIA: What paragraph is that? I'm sorry, Your
25 Honor.

1 THE COURT: 14. And I'm just proposing to strike the
2 first sentence. Comment?

3 MR. BRESCIA: No. That's -- no comment. I'm sorry.

4 THE COURT: All right.

5 (Pause.)

6 What's Paragraph 22 all about? I haven't made such a
7 ruling --

8 MR. BRESCIA: Your Honor, 1129(c) says the Court can
9 only confirm one plan.

10 THE COURT: Well, but I haven't even approved a
11 disclosure statement on a second plan yet, so I think that
12 provision deals when you have competing plans --

13 MR. BRESCIA: Competing plans.

14 THE COURT: -- that were solicited simultaneously. So
15 I don't think we need Paragraph 22, either. If somebody
16 disagrees, speak up.

17 MR. LEONARD: That also applies to Paragraph 30, the
18 last sentence, Your Honor.

19 THE COURT: All right. Got it. Hadn't read that far
20 yet.

21 (Pause.)

22 I would propose to add, in Paragraph 28, "The findings of
23 this Court above and those" -- well, "together with those
24 announced" -- well, the point being I want to incorporate the
25 findings and conclusions I stated on the record with those I'm

1 making in this order. So I don't want to micromanage, but
2 whatever language you want to add that would incorporate the
3 findings and conclusions that I've articulated orally with
4 those made in this order.

5 (Pause.)

6 And we're going to strike the last sentence in Paragraph
7 30.

8 (Pause.)

9 39 seems repetitive of a prior -- am I -- didn't we deal
10 with executory contracts someplace else?

11 MR. BRESCIA: There was a provision in the findings
12 proposed by the Debtor of a modifying Section 7.1 dealing with
13 insurance. And this one was just to pick up the other rulings
14 regarding executory contracts.

15 THE COURT: I could have sworn there was another
16 executory contract provision that I read.

17 MR. OKIN: Your Honor, there's a Paragraph 23 in, I
18 guess it's the findings, just dealing with what the claim
19 provides --

20 THE COURT: All right. All right. One is a finding
21 and the other is a conclusion. Works for me.

22 (Pause.)

23 I would propose to add at the beginning of Paragraph 40,
24 "To the extent permitted by law." As you all know, there is a
25 body of law developing with respect to the scope of post-

1 confirmation jurisdiction, so I don't think the plan can
2 dictate jurisdiction post-confirmation.

3 MR. BRESCIA: At the beginning --

4 THE COURT: Any objection? Anyone have objection to
5 adding that?

6 (No response.)

7 THE COURT: All right.

8 (Pause.)

9 Paragraph 47. I'm not sure I think that's an appropriate
10 provision in this order. I mean, the legal effect of
11 modifications will be whatever it is. I don't know that my
12 order can dictate that.

13 A VOICE: To the extent permitted by law.

14 (Chuckles.)

15 THE COURT: Well, I just don't think we need it.

16 A VOICE: That's fine, Your Honor. We were actually
17 talking about some modifications of that paragraph anyway, so
18 that's fine.

19 There is a change also in 45.

20 THE COURT: All right.

21 MR. BRESCIA: Yes, Your Honor. The last sentence of
22 45. After confirmation, I talked to Mr. Parham, and that
23 really should be the Creditors' Trustee, or Trustee of the
24 Creditors' Trust.

25 THE COURT: Okay. All right. So we're going to

1 delete --

2 MR. BRESCIA: So you want to strike 47?

3 THE COURT: Please. Why do we need 49?

4 MR. BRESCIA: In light of what's been discussed here
5 today, I think the Court has its definition of a final order,
6 so -- it's just one that we always like in there unless anybody
7 doesn't agree.

8 THE COURT: No. 49.

9 MR. BRESCIA: Right. Order not stayed?

10 THE COURT: Order is not stayed.

11 MR. OKIN: Your Honor, that is one that does matter to
12 us, for a few reasons. One, although I'm sure it's -- it may
13 be hopelessly optimistic, but we really do want to close this
14 as quickly as we can. The working capital adjustment date is
15 Monday. And while I don't think there's really any realistic
16 chance that we'll be ready to close on Monday, if we could, we
17 would, and a stay would prevent that.

18 The other issue is one of the main reasons we want to get
19 this order entered, is we need to be able to show the Chinese
20 government that the money -- that this is going to happen. I
21 think -- I don't know how that ten-day stay would be
22 interpreted. I don't know if they'll even know what it means.
23 But anything that does seem to limit the enforceability of the
24 order, I think is a problem for us in terms of making sure we
25 can get funding.

1 THE COURT: Well, but I've got to tell you. I'm a
2 little troubled with waiving that. I mean, I don't know if APS
3 is going to appeal. I assume they may. And it seems like,
4 given the fact that we don't know when you'll be able -- I
5 mean, I fully intend to enter a confirmation order. The issue
6 is whether or not I stay the effect of that order or -- well,
7 frankly, I don't stay it. It's just an automatic stay under
8 the Bankruptcy Rules. I know of no reason why, if you're able
9 to close sooner, you can't come in and ask me to waive the stay
10 subsequently.

11 MR. OKIN: It really is the combined issues, Your
12 Honor. I understand we could come in and ask you to waive it
13 if we're ready to close on Monday, for example. I really -- I
14 mean, it's a cultural issue. And you know, as an example, and
15 it's not this issue, Mr. Tong, as we were marking this up,
16 asked me to make sure we're not going to -- this isn't going to
17 be an interlineated signed order, because that would be an
18 issue.

19 And I'm just -- we really do need an order that clearly
20 says we're going to be able to purchase this. I'm concerned as
21 to how an order -- something indicating that there's a stay
22 would be interpreted.

23 THE COURT: Well, this may be an unfair question, but
24 so let me ask it. Does APS intend to appeal?

25 MR. GOOD: Mr. Leonard and I were talking about that,

1 and we have to discuss it with our client. At this point, I
2 don't know.

3 THE COURT: We're just talking here, but would you be
4 comfortable with, if they intend to close within the first ten
5 days, if I don't -- if I waive the stay and they propose to
6 close within the first ten days, they've got to give you 24
7 hours' notice or a business day's notice or something that
8 would give you all the opportunity to come in and ask for a
9 stay pending appeal?

10 MR. GOOD: Okay. I think --

11 THE COURT: I want to not prejudice you, but I also
12 hear counsel's concerns.

13 MR. GOOD: I think we can manage that, Your Honor,
14 yes.

15 (Counsel confer.)

16 MR. GOOD: May we have a minute?

17 THE COURT: Of course.

18 (Counsel confer.)

19 THE COURT: While they're talking, I would prefer to
20 delete Paragraph 50. We usually issue a post-confirmation
21 order that sort of dictates the timing of things. So --

22 MR. BRESCIA: That's fine, Your Honor. Also, from the
23 earlier announcements on the modifications to the plan, we
24 would put that in there as well.

25 THE COURT: Understand.

1 (Pause.)

2 MR. GOOD: Your Honor, I heard the Court's question.
3 Are you proposing to put something in the order to reflect that
4 if the closing is going to take place, that APS would be
5 notified within 24 hours?

6 THE COURT: Well, what I was proposing is that if
7 Paragraph 49 remained in, we would add a provision that said,
8 in the event that -- whatever the proper language is -- the
9 plan is going to be closed or the transaction, whatever it is,
10 is going to be closed within the first ten days following the
11 entry of this order, that the proponents are required to give
12 APS notice, you know, 24 hours' notice, prior to the closing.

13 MR. GOOD: Let me just visit with my client and we'll
14 have a response for you. Okay?

15 THE COURT: Fair enough.

16 (Pause.)

17 MR. GOOD: That's acceptable, Your Honor.

18 THE COURT: Does that work for everyone?

19 MR. OKIN: It does, Your Honor. That's fine.

20 THE COURT: All right. So then you'll get the --
21 technically right. But basically, it's --

22 MR. BRESCIA: Since we're making some other changes,
23 we can get the text right.

24 THE COURT: Yes. 24 hours' notice if you're going to
25 try and close the plan within the first ten days following the

1 entry of the confirmation order.

2 MR. BRESCIA: I presume, to avoid arguments, we'd say
3 one business day.

4 THE COURT: I'm sorry?

5 MR. BRESCIA: I assume, to avoid arguments, we'd say
6 one business day.

7 THE COURT: Yes. Yes. Good.

8 Those are all of my comments to the proposed order. Does
9 anyone have any other objection to the proposed form of the
10 confirmation order?

11 (No response.)

12 THE COURT: All right. Then, Mr. Roberts, if you
13 would make these -- well, Mr. Brescia, if you would make these
14 changes to the proposed confirmation order and the
15 modifications that you've discussed, I'd like you to circulate
16 that to Mr. Good and Mr. Leonard prior to submitting it to me.
17 I'd like them to sign off on the form of the order. Obviously
18 not the substance of it, but sign off on the form of the order.
19 /s/ is fine, but I would like to know that they've reviewed it
20 and they find it to be in acceptable form. And then upload it.
21 I'll sign it.

22 Now, --

23 MR. BRESCIA: Are you going to be here tomorrow, Your
24 Honor?

25 THE COURT: I am here tomorrow, but I'll be leaving at

1 the end of the day and will not be in the office on Friday.
2 I've got to go to New Orleans on business Thursday night. So
3 get it here as early in the day as you can tomorrow. If you'll
4 do me a favor, when you upload it, let Ms. Salcido know that
5 it's been uploaded. She leaves at 4:30, so don't miss --
6 that's a very important time. Don't miss that time. Get it
7 here as early in the day as you can, but certainly before 4:30.
8 And ask her to just directly send it to me, to my order box,
9 and that way I will be sure to look for it before I leave so
10 that I can get it signed.

11 Well, we've got a bunch of other stuff on the docket today,
12 so let's just take a minute to talk about the other matters
13 that are on the docket and what we need to do about those.

14 We've got the emergency motion to enforce the bid
15 procedures order by APS, and then we've got the disclosure
16 statement hearing, I think, with respect to APS's plan. Is
17 that right?

18 MR. GOOD: That's correct, Your Honor.

19 THE COURT: Well, we've clearly run out of time to
20 hear those tonight, given that it's 20 till 6:00. Is there
21 urgency, or can we simply -- I mean, obviously, your disclosure
22 statement is moot if this plan funds and closes, because we
23 obviously would not be going forward with a different plan in
24 the event this plan closes. So my suggestion with respect to
25 that is that we defer that for thirty days to see if the plan

1 funds. Now, if you disagree, please let me know.

2 With respect to being the back-up bidder, certainly, I
3 would anticipate you'd like that to be heard sooner rather than
4 later. And my suggestion there would be that you get with Ms.
5 Salcido and tell her I've asked you to find time as soon as we
6 have it available for whatever amount of time you parties agree
7 that you'd need for that to be heard, and we will go ahead and
8 try and hear that sooner, within the 30-day time period. Does
9 that make sense?

10 MR. GOOD: Yes, Your Honor. I'll check with Ms.
11 Salcido tomorrow and we'll see if we can tee that up.

12 And in terms of what we want to do with the disclosure
13 statement, I need a little bit of time to think about that --

14 THE COURT: All right.

15 MR. GOOD: -- and report back to you.

16 THE COURT: That'd be fine.

17 MR. GOOD: All right.

18 THE COURT: Just let Ms. Salcido -- if you want it
19 heard sooner than thirty days, let Ms. Salcido know. And
20 frankly, I guess, send me a letter that tells me -- explains to
21 me why you'd like it to be heard sooner than that. And copy
22 opposing counsel on your letter, of course, and that way they
23 can respond if they have some issue with some point that you've
24 raised in your communication.

25 MR. GOOD: Understood, Your Honor. I'll do that.

1 THE COURT: All right.

2 MR. GOOD: I'll do that.

3 THE COURT: Good. Anything else we should take up
4 this evening?

5 (No response.)

6 THE COURT: Then we're in recess. I'm going to be out
7 here for a few minutes, but you're excused at your convenience.

8 (Proceedings concluded at 5:40 p.m.)

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CERTIFICATE

19 I certify that the foregoing is a correct transcript from
20 the electronic sound recording of the proceedings in the
21 above-entitled matter.

22

23

24 Kathy Rehling
Certified Electronic Court Transcriber
25 CET**D-444

Date

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